



Australian Capital Territory

# Sentencing (Parole Time Credit) Legislation Amendment Act 2019

A2019-45

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Australian Capital Territory

# **Sentencing (Parole Time Credit) Legislation Amendment Act 2019**

**A2019-45**

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An Act to amend legislation about sentencing, and for other purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

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J2019-65

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Sentencing (Parole Time Credit) Legislation Amendment Act 2019*.

### 2 Commencement

This Act commences on a day fixed by the Minister by written notice.

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

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).

*Note 3* If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see [Legislation Act](#), s 79).

### 3 Legislation amended

This Act amends the *Crimes (Sentence Administration) Act 2005* and the *Crimes (Sentencing) Act 2005*.

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## Part 2 Crimes (Sentence Administration) Act 2005

### 4 Definitions—ch 7 Section 117, new definition of *non-ACT offence*

*insert*

*non-ACT offence* means—

- (a) an offence against a law of the Commonwealth, a State or another Territory that is punishable by imprisonment; or
- (b) an offence outside Australia against a law of a place outside Australia that, if it had been committed in Australia, would be punishable by imprisonment.

### 5 Parole—effect of custody during order Section 139 (1)

*substitute*

- (1) An offender is taken, during a period, to be serving the sentence of imprisonment for which parole was granted if—
  - (a) the offender is taken into lawful custody during the period while on parole; and
  - (b) the custody is only in relation to the offender's parole obligations; and
  - (c) the custody is not counted within parole time credit applying under part 7.5A against the sentence.

**Example—custody in relation to parole obligations**

a period during which the offender is remanded in custody under s 144 (Arrest without warrant—breach of parole obligations)

**6 Section 140 heading**

*substitute*

**140 Parole—when time is served against sentence****7 Section 140 (2)**

*substitute*

- (2) Subsection (1) is subject to section 139 and part 7.5A (Parole time credit).

**8 Arrest warrant—breach of parole obligations  
Section 145 (2) (c)**

*substitute*

(c) state—

- (i) in brief, the matter on which the information is based; and
- (ii) an end date for the offender's parole time credit under part 7.5A; and

**9 Cancellation of parole order for non-ACT offence  
Section 150 (1)**

*substitute*

- (1) This section applies if, while an offender's parole order is in force, the offender commits, and is convicted or found guilty of, a non-ACT offence.

**10 Cancellation after parole order has ended  
Section 151 (1)**

*substitute*

- (1) This section applies to an offender if—
- (a) the offender's parole order has ended (other than by cancellation) and, after the order ends, the board decides that the offender has been convicted or found guilty of an offence against a territory law committed while the offender was on parole; or
  - (b) the offender's parole order has ended (including by cancellation) and, after the order ends, the board decides that the offender has been convicted or found guilty of a non-ACT offence committed while the offender was on parole.

**11 Notice of board decisions about parole  
New section 157 (1) (c)**

*insert*

- (c) section 161E (Exception—certain non-ACT offences).

**12 Section 157 (4)**

*substitute*

- (4) If the decision is to cancel the offender's parole, the notice of the decision must state—
- (a) where and when the offender must report for full-time detention because of the cancellation; and
  - (b) the end date for the offender's parole time credit under part 7.5A.

*Note* The end date for parole time credit is set under pt 7.5A and may change if further breaches of parole are proven at a later date (see s 161I).

**13 Parole order—effect of cancellation  
Section 160 (4)**

*substitute*

- (4) Subsection (3) is subject to section 139 (Parole—effect of custody during order) and part 7.5A (Parole time credit).

**14 Cancellation of parole—recommittal to full-time detention  
Section 161 (3)**

*substitute*

- (3) Subsection (2) is subject to section 139 (Parole—effect of custody during order) and part 7.5A (Parole time credit).

**15 New part 7.5A**

*insert*

**Part 7.5A Parole time credit****Division 7.5A.1 Preliminary****161A Application—pt 7.5A**

This part applies to an offender if—

- (a) while the offender is under a parole order for a sentence of imprisonment for an offence (the *parole offence*), the offender breaches 1 or more parole obligations; and
- (b) the offender's parole order is cancelled.

*Note* A parole order may be cancelled after it has ended (see s 151).



**161B Definitions—pt 7.5A**

In this part:

*family violence offence*—see the [Family Violence Act 2016](#), dictionary.

*non-ACT family violence offence* means a non-ACT offence that is substantially similar to a family violence offence, despite any difference in the penalty applying under a territory law.

*non-serious offence* means an offence (other than a serious offence) against a territory law that is punishable by imprisonment.

*parole offence*, of an offender—see section 161A (a).

*parole sentence*, of an offender, means the sentence or sentences to which the offender's parole order relates.

*parole time credit*, of an offender, means the period of time worked out under division 7.5A.3 for the offender.

*serious drug offence* means an offence against any of the following provisions of the [Criminal Code](#), punishable by a maximum term of imprisonment of 10 years or more:

- (a) part 6.2 (Trafficking in controlled drugs);
- (b) part 6.3 (Manufacturing controlled drugs and precursors);
- (c) part 6.4 (Cultivating controlled plants);
- (d) part 6.5 (Drug offences involving children).

*serious non-ACT offence* means a non-ACT offence that is substantially similar to a serious offence, despite any difference in the penalty applying under a territory law.

*serious offence* means—

- (a) a serious drug offence; or
- (b) a sexual offence; or

- (c) a serious violent offence; or
- (d) an offence against the [Criminal Code](#), chapter 6A (Participation in criminal groups), punishable by a maximum term of imprisonment of 10 years or more; or
- (e) an offence against a territory law previously in force that is substantially similar to an offence mentioned in paragraphs (a) to (d).

*serious violent offence* means an offence against—

- (a) either of the following provisions of the [Crimes Act 1900](#), punishable by a maximum term of imprisonment of 10 years or more:
  - (i) part 2 (Offences against the person);
  - (ii) part 2A (Industrial manslaughter); or
- (b) the [Criminal Code](#), section 310 (Aggravated robbery).

*sexual offence* means an offence against any of the following provisions of the [Crimes Act 1900](#):

- (a) part 3 (Sexual offences);
- (b) part 4 (Female genital mutilation);
- (c) part 5 (Sexual servitude).

## **Division 7.5A.2 Parole time credit—rules for applying**

### **161C General rule**

- (1) An offender's parole time credit is taken to be time served against the offender's parole sentence.
- (2) This section is subject to section 161D and section 161E.

**161D Exceptions—certain ACT offences**

- (1) This section applies if an offender breaches a parole obligation by committing an offence (the *second offence*) and—
  - (a) the second offence was committed within 3 months after the offender's parole release date; or
  - (b) the offender's parole offence is a serious offence or a serious non-ACT offence, and the offender's second offence is a serious offence; or
  - (c) the offender's parole offence is a family violence offence or a non-ACT family violence offence, and the offender's second offence is a family violence offence.

- (2) The sentencing court for the second offence must make an order about whether the offender's parole time credit is to be taken as time served against their parole sentence.

*Note* A court sentencing an offender is required to explain to the offender, and notify the offender of, the application of parole time credit (see *Crimes (Sentencing) Act 2005*, s 82 and s 84).

- (3) In making the order, the court—
  - (a) must not take parole time credit as time served against the parole sentence unless the court is satisfied there are special circumstances to warrant it; but
  - (b) if satisfied there are special circumstances—may take the parole time credit, either wholly or partly, to be time served against the parole sentence.

**161E Exceptions—certain non-ACT offences**

- (1) This section applies if an offender breaches a parole obligation by committing a non-ACT offence (the *second offence*) and—
  - (a) the second offence was committed within 3 months after the offender's parole release date; or
  - (b) the offender's parole offence is a serious offence or a serious non-ACT offence and the offender's second offence is a serious non-ACT offence; or
  - (c) the offender's parole offence is a family violence offence or a non-ACT family violence offence and the offender's second offence is a non-ACT family violence offence.
- (2) The board must make an order about whether the offender's parole time credit is to be taken as time served against their parole sentence.
- (3) In making the order, the board—
  - (a) must not take parole time credit as time served against the parole sentence unless the board is satisfied there are special circumstances that warrant it; but
  - (b) if satisfied there are special circumstances—may take the parole time credit, either wholly or partly, to be time served against the parole sentence.

**161F Appeal to Supreme Court—order by board**

- (1) This section applies if the board has made an order under section 161E in relation to an offender (the *appellant*).
- (2) The appellant may appeal the order to the Supreme Court on a question of fact or law.

- (3) An appeal is started by the appellant filing a notice of appeal in the office of the registrar of the Supreme Court within the period of 28 days after the order was notified by the board under section 157, or within any further time the Supreme Court allows.
- (4) As soon as practicable after starting the appeal, the appellant must serve a copy of the notice of appeal on—
  - (a) the board; and
  - (b) the director of public prosecutions; and
  - (c) the director-general.
- (5) Any document or thing that was before the board that relates to the appeal must—
  - (a) on service of the notice of appeal on the board—be given by the board to the Supreme Court; and
  - (b) on the proceeding for the appeal ending—be returned by the Supreme Court to the board.
- (6) If an appeal has been properly started, the enforcement of the order appealed from is stayed until the appeal ends, or is abandoned or discontinued.

### **Division 7.5A.3 Parole time credit—how to apply**

#### **161G Working out parole time credit—general rule**

- (1) This section applies when working out the parole time credit taken to be time served against an offender's parole sentence under section 161C.

- (2) The parole time credit begins on the offender's parole release date and ends on the day before the day mentioned in table 161G, column 3 that applies to the offender because of a circumstance mentioned in column 2.

**Table 161G**

<b>column 1 item</b>	<b>column 2 circumstance</b>	<b>column 3 day</b>
1	the offender is arrested without a warrant under s 144	the day of the arrest
2	an arrest warrant is issued under s 145 for the offender	the day the warrant is issued
3	a warrant is issued for the offender under s 206 in relation to a hearing, and the board decides to cancel the offender's parole under s 148 or s 156 after the hearing	the day the warrant is issued
4	the offender's parole is cancelled because the offender fails to report under a core condition of their parole order, or another direction of the director-general, on 2 or more occasions	(a) the earliest day when the offender failed to report; or (b) if the board determines a later day, taking into account the offender's failures to report—the day determined by the board
5	the offender, while on parole, commits an offence punishable by imprisonment not mentioned in section 161D or 161E and is convicted or found guilty by a court of the offence	(a) the day the court determines the offence was committed; or (b) if the court determines the offence was committed on more than 1 day, or within a range of days—the earliest day determined by the court
6	in any other case	the day the parole order is cancelled

**161H Working out parole time credit—exceptions**

- (1) This section applies when working out the parole time credit taken to be time served against an offender's parole sentence under section 161D or section 161E.
- (2) The period of an offender's parole time credit begins on the offender's parole release date and ends on—
  - (a) the day before the day the second offence mentioned in the relevant provision was committed, determined by the sentencing court; or
  - (b) if the sentencing court determines the second offence was committed on more than 1 day, or within a range of days—the day before the earliest day determined by the court.

**161I Parole time credit—shortest period to apply**

- (1) Not more than 1 parole time credit per parole order is to be taken as time served against an offender's parole sentence.
- (2) However, if an order has been made under this part that parole time credit is not to be taken as time served against an offender's parole sentence, no parole time credit for the parole order is to apply to the offender's parole sentence.
- (3) The parole time credit to be taken as time served against an offender's parole sentence is the shortest parole time credit that applies under this part.
- (4) To remove any doubt, subsection (3) applies despite—
  - (a) a longer parole time credit having been previously taken as time served against an offender's sentence for the parole order; and

- (b) any other document stating a different parole time credit for the offender.

**Example**

Parole time credit was taken to be time served against an offender's parole sentence, ending on the day the order was cancelled and the offender was recommitted to full-time detention under s 161. Later, the offender is convicted of an offence committed while on parole. The offender's parole order is taken, under s 151, to have been cancelled on the day the offence was committed, and the offender is recommitted to full-time detention by the recommitting authority. On the second recommitment, the parole time credit to be taken as time served against the offender's sentence is the later parole time credit, being the shortest parole time credit that applies under this part.

**16 Parole order transfer—effect of registration under this Act  
Section 168 (5)**

*substitute*

- (5) Subsection (4) is subject to section 139 (Parole—effect of custody during order) and part 7.5A (Parole time credit).

**17 Arrest of offender for board hearing  
New section 206 (3) (d)**

*insert*

- (d) state an end date for the offender's parole time credit under part 7.5A.



**18 New chapter 22***insert***Chapter 22 Transitional—Sentencing  
(Parole Time Credit)  
Legislation Amendment  
Act 2019****1002 Definitions—ch 22**

In this chapter:

*commencement day* means the day the *Sentencing (Parole Time Credit) Legislation Amendment Act 2019*, section 3 commences.**1003 Parole time credit—breaches before commencement day**

- (1) This section applies if—
  - (a) before the commencement day, an offender breached their parole obligations while under a parole order; and
  - (b) on or after the commencement day, the parole order is cancelled because of the breach.
- (2) Part 7.5A applies to the offender.

**1004 Parole time credit—offenders awaiting sentence**

- (1) This section applies to an offender if, before the commencement day—
  - (a) the offender's parole order was cancelled because they committed an offence; and
  - (b) the offender had not been sentenced for the offence.
- (2) Part 7.5A applies to the offender.

**1005 Parole time credit applies in relation to old parole orders**

Part 7.5A applies in relation to a parole order made under the *Rehabilitation of Offenders (Interim) Act 2001* (repealed) that, immediately before the commencement day, was in force under section 343 (3) of this Act.

*Note* The *Rehabilitation of Offenders (Interim) Act 2001* (repealed) continues to apply to parole orders in certain circumstances (see s 343 (3)).

**1006 Transitional regulations**

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Sentencing (Parole Time Credit) Legislation Amendment Act 2019*.
- (2) A regulation may modify this chapter (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this chapter.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.
- (4) This section expires 12 months after the commencement day.

**1007 Expiry—ch 22**

This chapter expires 5 years after the commencement day.

*Note* Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

**19 Dictionary, new definitions**

*insert*

*family violence offence*, for part 7.5A (Parole time credit)—see section 161B.

*non-ACT family violence offence*, for part 7.5A (Parole time credit)—see section 161B.

*non-ACT offence*—see section 117.

*non-serious offence*, for part 7.5A (Parole time credit)—see section 161B.

*parole offence*, of an offender, for part 7.5A (Parole time credit)—see section 161A (a).

*parole sentence*, of an offender, for part 7.5A (Parole time credit)—see section 161B.

*parole time credit*, of an offender, for part 7.5A (Parole time credit)—see section 161B.

*serious drug offence*, for part 7.5A (Parole time credit)—see section 161B.

*serious non-ACT offence*, for part 7.5A (Parole time credit)—see section 161B.

*serious offence*, for part 7.5A (Parole time credit)—see section 161B.

*serious violent offence*, for part 7.5A (Parole time credit)—see section 161B.

*sexual offence*, for part 7.5A (Parole time credit)—see section 161B.

## Part 3 Crimes (Sentencing) Act 2005

### 20 Imprisonment—concurrent and consecutive sentences Part 5.3 heading, new note

*insert*

*Note* The *Crimes (Sentence Administration) Act 2005*, part 7.5A (Parole time credit) may apply when a primary sentence is imposed on an offender for an offence that was committed while the offender was on parole.

### 21 Imprisonment—explanation to offender New section 82 (1) (i)

*before the examples, insert*

- (i) if the sentence is for an offence committed by the offender while on parole for another offence—the application of a parole time credit for the offender in relation to the sentence for the other offence under the *Crimes (Sentence Administration) Act 2005*, part 7.5A (Parole time credit).

### 22 Imprisonment—official notice of sentence New section 84 (2) (i)

*insert*

- (i) if the sentence is for an offence committed by the offender while on parole for another offence—an end date for the offender's parole time credit under *Crimes (Sentence Administration) Act 2005*, part 7.5A (Parole time credit).

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 19 September 2019.

**2 Notification**

Notified under the [Legislation Act](#) on 6 December 2019.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Sentencing (Parole Time Credit) Legislation Amendment Bill 2019, which was passed by the Legislative Assembly on 26 November 2019.

Clerk of the Legislative Assembly

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