



Changes to conditional release orders – information for legal stakeholders

Background

The *Strengthening Community Safety Act 2023* (the SCS Act) was passed by the Queensland Parliament on 16 March 2023 and commenced on 22 March 2023, making changes to the *Youth Justice Act 1992* (the YJA), the *Bail Act 1980*, the *Police Powers and Responsibilities Act 2000* and the Criminal Code.

Included in these amendments are changes to the way Conditional Release Orders (CROs) operate.

Changes to operational period

Amendments to YJA s.221(1)(a) increase the maximum operational period of a CRO from three months to six months. The actual length of a CRO remains discretionary; no criteria have been set to guide courts in determining an appropriate length for a CRO, including where a length greater than three months should be considered.

Breach of CRO made in relation to a prescribed indictable offence

YJA s.246 now applies only to CROs made in relation to offences that were not prescribed indictable offences (s.246(1)).

A new section 246A has also been introduced. Where a CRO relates to a prescribed indictable offence, this section requires the court (where a breach of the order is found proven) to revoke the CRO and order that the head sentence of detention be served, unless the court considers there are special circumstances.

Special circumstances are not defined but the expression is taken from section 227(2) – ‘A court may order a child to be released from

detention after serving 50% or more, and less than 70%, of a period of detention if it considers that there are special circumstances...’.

As with any decision under the YJA, when the court is determining special circumstances it must consider the youth justice principles (YJA s.3).

The court’s decision as to whether special circumstances exist is a sentence order and reviewable under section 118 (s.246A(3)(c) and (3A)).

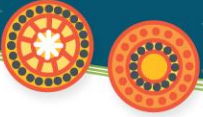
Changes to sections 241 and 242 ensure that the new section 246A applies equally to departmental applications for contravention and also breaches from the bench for reoffending.

Prescribed indictable offences

Prescribed indictable offences are defined in Schedule 4 (Dictionary) of the Act. Prior to the SCS Act they included life offences, offences which would attract 14 years imprisonment for an adult (except low-end drug possession) and various personal, property and motor vehicle offences under the Criminal Code, including unlawful use of a motor vehicle (UUMV) as a driver.

The SCS Act has added UUMV as a passenger (by removing the proviso that the child was allegedly the driver), and entering premises with intent to commit an indictable offence.

The SCS Act also created new circumstances of aggravation for UUMV, some of which attract 14 years imprisonment for an adult (Criminal Code s.408A(1C)) – at night, with violence, armed, in company, or property damage); these are also prescribed indictable offences due to their 14 year penalty.



Transitional arrangements

YJA s.410 provides that the new breach provisions under s.246A apply if the breach occurs after the commencement of the legislation, irrespective of when the order was made.

It is likely that a CRO made before commencement for an offence that was not a prescribed indictable offence before commencement is not a CRO 'made in relation to a prescribed indictable offence', and so section 246 will apply rather than 246A. However, a court decision may be needed for certainty.

Further information

For further information about the *Strengthening Communities Safety Act 2023* please email Youth Justice Policy, Strategy and Legislation (YJPSL) at OSED_YJPSL@cyjma.qld.gov.au.

YJPSL cannot give legal advice but may be able to assist with other questions.