Serious repeat offender declaration – information for legal stakeholders

Background

The *Strengthening Communities Safety Act 2023* (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* (YJA), the *Bail Act 1980*, the *Police Powers and Responsibilities Act 2000* and the Criminal Code.

One of the changes is the introduction of a separate sentencing regime for 'serious repeat offenders'.

The regime enables courts, on application by the prosecution, to declare a child a 'serious repeat offender'.

About serious repeat offender declarations

The new YJA s.150A operates where a court is sentencing a child for a prescribed indictable offence. Upon application by the prosecution, the court may declare the young person to be a 'serious repeat offender' if all the eligibility criteria are met.

Section 150A(4) requires a court to provide reasons for making the declaration.

Prescribed indictable offences

Prescribed indictable offences are defined in Schedule 4 (Dictionary) of the YJA. They include life offences, offences which would attract 14 years or more imprisonment for an adult (except low level drug possession) and various personal, property and motor vehicle offences under the Criminal Code. The SCS Act added unlawful use of a motor vehicle (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 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.

Eligibility criteria

The court may only declare a young person to be a serious repeat offender if (YJA s.150A(2)):

- at least 1 detention order (with or without a conditional release order) has previously been made against the young person in relation to a prescribed indictable offence; and
- A pre-sentence report has been prepared for the offences that are before the court for sentencing and the court has considered the report; and
- the court has had regard to the young person's previous offending history and bail history; any efforts of rehabilitation by the young person (including rehabilitation carried out under a court order); any other matter the court considers relevant; and
- the court is satisfied that there is a high probability that the young person would commit a further prescribed indictable offence.

The regime applies to sentencing proceedings after commencement, including for offences committed before commencement (YJA s.409).

Duration of a declaration

A serious repeat offender declaration is effective for a 'relevant period' (section 150B(4)). Relevant period means:

(a) if the young person is 'ordered by the original court to be detained' (i.e. a detention order under s.175(1)(g) or s.176(2) or (3)), the period commencing on the day the declaration is made and ending 12 months after the day the child is released from detention; or

(b) if the young person is not 'detained by the original court', 12 months from the day the declaration was made by the original court.

The 'day the child is released from detention' will be the day of sentence, if a detention order is such that the child is released on a supervised release order, or with time wholly served, on that day.

Remaining in custody by order of the original court on other matters (for example, if a child is sentenced by a magistrate to time served for a prescribed indictable offence, but remanded in custody on another charge) does not trigger s.150B(4)(a). The phrase 'ordered…to be detained' comes from the wording in s.175(1)(g) and s.176(2) and (3). See also s.265 for 'ordered to be detained' juxtaposed with 'remanded in custody'.

If a child is sentenced to detention and has time to serve following the sentence date, but then remains in custody on other matters beyond their supervised release date, then the effect of s.150B(4)(a) is that the 12 months starts on the actual release date, not the supervised release date. This is because the provision uses 'the day the child is released from detention' and not a reference to a date under s.227 (cf. sections 138(6)(c); 228(1); 276B(2)(b)(ii); 276E(2)(c)).

Impact for young person

At the time of the declaration

Section 150A introduces a new sentencing regime for a young person declared to be a 'serious repeat offender'. Under a serious repeat offender declaration, the court must have primary regard to the new sentencing principles mentioned in section 150A(3):

- the need to protect members of the community;
- the nature and extent of violence, if any, used in the commission of the offence;
- the extent of any disregard by the young person in the commission of the offence for the interests of public safety;
- the impact of the offence on public safety; and
- the child's previous offending history and bail history.

While the court must have primary regard to the above matters, the sentencing principles in section 150 will still have secondary application.

If the young person re-offends

Section 150B provides that if a young person with a serious repeat offender declaration is being sentenced for a further prescribed indictable offence committed within the relevant period, then the court must have primary regard to the matters mentioned in s150A(3). As noted above, section 150 will still have secondary application.

Courts are only bound to rely on an earlier serious repeat offender declaration that was made by a court of like or higher jurisdiction (s.150B(1)(b)). For example, a Childrens Court judge is not bound by a serious repeat offender declaration made by a Childrens Court magistrate.

Reviews of magistrates' declarations

Schedule 4 (Dictionary) of the Act has been amended to include the new serious repeat offender declaration in the definition of 'sentence order'. This means that a young person is able to make an application for review by a Childrens Court judge of the making of a declaration by a Childrens Court magistrate (s.118).

Youth Justice functions

Consideration of a serious repeat offender declaration is on the application of the prosecution. Youth Justice is not a party to the application, but may provide factual information to assist the court such as information about the young person's previous offending history and bail history, and any efforts of rehabilitation by the young person (including rehabilitation carried out under a court order).

A pre-sentence report (PSR) prepared for a young person who has had at least one detention order made against them in relation to a prescribed indictable offence, or who has been declared a serious repeat offender and the offence for which the child is being sentenced was committed during the relevant period, may note these facts.

In PSR interviews with the young person and their family, Youth Justice staff will seek to ensure the young person understands their eligibility for a serious repeat offender declaration and the implications should the court make one.

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.