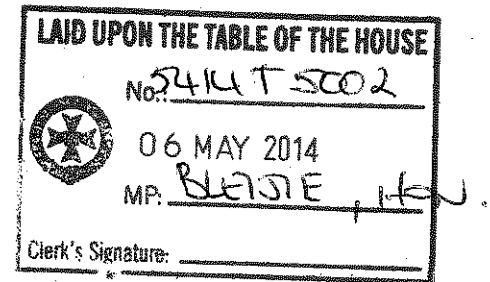


Property Occupations Bill 2013

MARIS 6/5/14



Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Jarrod Bleijie MP

Title of the Bill

Property Occupations Bill 2013

Objectives of the Amendments

The Bill is one of four Bills that were introduced by the Attorney-General and Minister for Justice on 20 November 2013, to facilitate the repeal and split of the *Property Agents and Motor Dealers Act 2000* (PAMDA) into four separate Acts.

The Bill provides the regulation and compliance framework for property related occupations and aims to:

- achieve an appropriate balance between the need to regulate for the protection of consumers and the need to promote freedom of enterprise in the market place;
- simplify and reduce the level of red tape and regulation the PAMDA currently imposes on the property industry; and
- improve the operation of the legislation and clarify particular provisions.

The objectives of the amendments to the Bill are to address minor, editorial errors that have been identified since introduction, and to improve the operation of the provisions by:

- ensuring administrators etc. are afforded the same exemptions across the three industry specific Bills that have been developed to facilitate the split of the PAMDA;
- ensuring, consistent with the current approach taken under the PAMDA and related subordinate legislation, a regulation may prescribe the circumstances under which a licence term may be issued or renewed for less than 1 or 3 years;
- ensuring the revocation of appointment provisions are consistent;
- ensuring the information on the notice given to a client by an assignee upon assignment of their appointment is consistent with the policy objectives of the provision;
- ensuring parties to an appointment only have to give a minimum of 30 days notice to the other party to the appointment when revoking particular appointments;

- ensuring auctioneers can continue to announce when a property is on the market during an auction;
- ensuring the amendments in the Bill which clarify that auctioneers and real estate agents are prohibited from disclosing a price guide for a property that is going to auction, do not negatively impact on the functionality of websites or portals that are used by buyers to search for real property that is for sale;
- facilitating the continued processing of particular PAMDA applications about licensing; and
- addressing minor, editorial and typographical errors that have been identified in the Bill.

The amendments also include a number of small amendments to the *Youth Justice Act 1992* to clarify the application of provisions providing for the transfer of offenders from youth detention to adult correctional facilities.

Achievement of the Objectives

Amendments to the administrators etc. clause

The objective of the amendment to ensure administrators etc. are afforded the same exemptions across the three industry specific Bills is achieved by amending how the 'prescribed provisions' are defined in clause 6 (Administrators etc.) of the Bill. Clause 6 of the Bill provides that particular persons appointed as administrators, receivers, liquidators or other controllers, for a corporation or individual, are exempt from the 'prescribed provisions' when performing a regulated activity in relation to the business they have been appointed to administer.

However, the definition of 'prescribed provisions' in clause 6 of the Bill is inconsistent with the prescribed provisions in the other two industry specific Bills (the Motor Dealers and Chattel Auctioneers Bill 2013 and the Debt Collectors (Field Agents and Collection Agents) Bill 2013) that, along with this Bill, will facilitate the repeal and split of the PAMDA. Therefore, the amendment redefines the 'prescribed provisions' so as to ensure consistency, where relevant, with the foregoing Bills.

Amendments to ensure licence terms may continue to be shortened by regulation

The objective of the amendment to enable a licence to be issued or renewed for a term shorter than the prescribed 1-year or 3-year term in particular circumstances, which are to be prescribed in regulation, is necessary to provide for administrative efficiency.

Clause 80 of the Bill provides that a licence may be issued for a 1-year or 3-year term. However, there are a range of circumstances when this may impose unnecessary administrative burden on licence holders and the Government, and it may be beneficial to instead issue or renew a licence to a person for a term shorter than 1 or 3 years. For example, a licence may be issued for a shorter term to ensure multiple licences held by the same person expire on the same day. Accordingly, the amendment provides power for a regulation to prescribe the circumstances under which a licence may be issued or renewed for a shorter term.

The potential breach of the fundamental legislative principle associated with this amendment (that legislation have sufficient regard to the institution of Parliament) is discussed in more detail below.

Amendments to the revocation of appointment provisions

The objective of the amendments to the revocation of appointment provisions (clause 106 (Other requirements—statement that appointment may be revoked by notice) and clause 114 (Revocation of appointment)) is to address a potential inconsistency that has been identified in the Bill with respect to the revocation of particular appointments. More specifically, the amendment ensures an open listing may continue to be revoked by either party providing written notice to the other party to the appointment. There are no minimum timeframes associated with revoking an open listing.

Amendments to the information that must be included in the notice given by an assignee to a client upon assignment of an appointment

The objective of the amendment is to ensure the information on the notice given to a client by an assignee upon assignment of their appointment under clause 113 (Assignment of appointment) is not inconsistent with the policy objective of the provision. This is achieved by ensuring the notice states: *the appointment may be revoked by the client by giving at least 30 days written notice of the revocation to the assignee, unless the client and the assignee agree, in writing to an earlier day for the appointment to end.*

Under the legislation, it is intended that parties to an appointment may mutually agree to an end date for the appointment. When both parties mutually agree, this end date may be a date that results in less than the minimum notice period being given about the ending of the appointment. The amendment ensures this policy intention is clear and communicated to clients in a notice given by an assignee.

Amendments about the 30 day notice period when revoking particular appointments

The objective of the amendments, to ensure parties to an appointment only have to give a minimum of 30 days notice to the other party to the appointment when revoking particular appointments, is achieved by inserting a new subclause into clause 114 (Revocation of appointment) of the Bill. The new subclause provides that despite any agreement to the contrary by the parties to the appointment, a party is only required to give the other party to the appointment at least 30 days written notice of the revocation, unless both parties agree in writing to an earlier day for the appointment to end. The new subclause also provides that any provision of an agreement to the contrary is void.

Without the amendment, it may have been possible for parties to an appointment to enter into a separate agreement that required the other party to provide a longer notice period when revoking particular appointments. Requiring a party to provide more than 30 days notice through a separate agreement is inconsistent with the policy objective of the provisions.

Amendments about auctioneers announcing when a property is on the market

The objective of the amendment is to ensure auctioneers can continue to announce when a property is on the market during an auction. This is achieved by inserting a new subclause into clause 214 (Auctioneer not to disclose reserve or other price) of the Bill.

Currently, clause 214 of the Bill provides that an auctioneer must not disclose to a person (other than a person acting for the seller in relation to the sale) the reserve price set for the offered property, or an amount the auctioneer considers is a price likely to result in a successful or acceptable bid for the offered property, or a price guide for the offered property.

The amendment to the Bill provides that this does not apply to an indication by an auctioneer, during the auction, to persons present at the auction that the reserve price has been met, provided the reserve price has been reached or exceeded when the announcement is made.

This amendment supports current industry practice and implements a recommendation made in the Legal Affairs and Community Safety Committee's *Report – No.51, Property Occupations Bill 2013* following the Committee's examination of the Bill.

Amendments about price guides to address potential adverse impacts on real estate web portals

The objective of the amendments is to ensure the provisions in the Bill prohibiting agents disclosing a price guide for auction properties do not negatively impact on the functionality of websites or portals that are used by buyers to search for real property that is for sale. This is achieved by inserting new subclauses into clauses 214 (Auctioneer not to disclose reserve or other price) and 216 (Real estate agent not to disclose reserve or other price) of the Bill and by providing a definition of *electronic listings provider*.

These amendments respond to concerns raised by stakeholders in relation to real estate website search portals, including during the Legal Affairs and Community Safety Committee's examination of the Bill.

More specifically, the new subclauses that will be inserted into clauses 214 and 216 provide that an auctioneer or real estate agent does not contravene the relevant provision only because a price or price range for the property is disclosed by the auctioneer or real estate agent to an electronic listings provider to establish search criteria for listing the property for sale on the provider's website or other electronic medium if, the auctioneer or real estate agent is satisfied on reasonable grounds that:

- a. the electronic listings provider will list the property for sale on the website without disclosing the price or price range; and
- b. the listing will include any statement prescribed under a regulation.

Generally speaking, the statement prescribed under a regulation is intended to clarify to prospective purchasers that the property is being sold by auction or without a price and as such, price guides are not permitted; however, the property portal website allows users to search by price criteria for ease of search purposes only.

For the purposes of the new subclauses, a definition of electronic listings provider has also been provided. An electronic listings provider means an entity that lists real property for sale on a website or other electronic medium, if the website or medium is used by buyers to search for properties for sale.

Amendments to facilitate the continued processing of particular applications about licensing

The objective of the amendment that will facilitate the continued processing of particular applications about licensing is achieved by inserting new clause 250A (Chief executive may accept PAMDA forms). This new clause provides that instead of an approved form under an Agents Act, the chief executive may accept, for an application relating to a transitioned licence or registration, the relevant PAMDA form relating to the transitioned licence or registration. For the purposes of this new clause, a *PAMDA form* means an approved form under PAMDA in force immediately before the commencement.

The new clause supports the current business practices of the Office of Fair Trading, as approximately two months before a licensee's licence is due to be renewed, the Office of Fair Trading sends the licensee the form (which will be a PAMDA approved form) that is required to be completed to renew their licence. The insertion of the new clause will provide for the continued processing of these applications and ensure that, if the licensee does not submit their renewal application to the chief executive until after the commencement of the Act, the chief executive will be able to continue to process the renewal application.

Ensuring the chief executive may accept a PAMDA approved form for licensing purposes as an approved form under the Bill will reduce bureaucratic red tape for applicants and for the Office of Fair Trading, particularly as the information that applicants are required to provide under the Bill is largely consistent with the PAMDA.

Amendments to address minor, editorial and typographical errors in the Bill

The objective of addressing minor, editorial type errors of the Bill is being achieved by amendments to clauses 137 (Offence to sell, lend or borrow registration certificate), 204 (Orders District Court may make), 207 (Misleading conduct), 208 (Unconscionable conduct), 209 (False representations and other misleading conduct relating to residential property), 214 (Auctioneer not to disclose reserve or other price), 216 (Real estate agent not to disclose reserve or other price), 227 (Power of court), 228 (Power of court for particular offences), 236 (Regulation-making power), 249 (Existing appointments to act as agent), 263 (Return of beneficial interest if in form of commission), 265 (Buyer's rights if notice about land not given or materially defective continue), Schedule 1 (Decisions subject to review) and Schedule 3 (Dictionary).

The objective is also being achieved by an amendment to clause 142 (Immediate suspension) to retain the chief executive's power to suspend a person's registration if the chief executive reasonably believes the person has contravened the PAMDA before the Bill commences and to ensure the provision is correctly numbered. This amendment is necessary to ensure the smooth transition to the new legislative framework and to ensure registered salespersons will (consistent with licensees) continue to be held accountable for their actions performed when the PAMDA was in force.

In addition, the objective of addressing minor, editorial and typographical errors in the Bill is being achieved by an amendment to clause 271 (Refund of fees paid under PAMDA) to ensure regulations made under each of the Agents Acts may provide for the refunding of fees paid under the PAMDA. Without this amendment, it is arguable that only a regulation made under the Property Occupations Act could provide for the refunding of fees in prescribed circumstances, including for example licensing fees paid under the PAMDA by motor dealers or commercial agents.

The amendments to address the minor, editorial errors in the Bill were identified in the *Legal Affairs and Community Safety Committee Report – No.51, Property Occupations Bill 2013*, by the Department of Justice and Attorney-General and by the Office of the Queensland Parliamentary Counsel post introduction of the Bill. Amending the Bill to address minor, editorial errors will ensure the provisions operate effectively and as intended.

Amendments to the Youth Justice Act 1992

The *Youth Justice and Other Legislation Amendment Act 2014* inserted a new part 8, division 2A into the *Youth Justice Act 1992* providing for the administrative transfer of offenders from youth detention to adult correctional facilities on reaching 17 years of age if they have at least six months left to serve in detention. This involves transfers being effected under a prison transfer direction issued by the chief executive on the child being sentenced to a period of detention.

Transitional provisions were also inserted into the *Youth Justice Act 1992* to apply the transfer provisions equally to children and adults who were already in detention at commencement of the *Youth Justice and Other Legislation Amendment Act 2014* but would otherwise have been eligible to be transferred.

While the legislative intent of the transfer process (including the transitional provisions) is clear, it has been identified that the precise practical effect of the transitional provisions is in some circumstances open to interpretation. The Bill therefore makes several minor amendments to the transitional provisions to ensure they are fully effective in applying the transfer provisions to persons who were in detention at commencement of the *Youth Justice and Other Legislation Amendment Act 2014*.

These amendments will clarify the transitional provisions' operation in relation to the persons to whom they apply, the timeframe within which the obligation imposed on the chief executive to issue a prison transfer direction must be complied with, when a prison transfer direction takes effect and the period for which that effect continues.

Alternative Ways of Achieving Policy Objectives

Legislative amendment is the only means of achieving the policy objectives.

Estimated Cost for Government Implementation

The proposed amendment will not impose additional costs on Government to those outlined in the Explanatory Notes to the Bill.

Consistency with Fundamental Legislative Principles

The proposed amendments are largely consistent with fundamental legislative principles.

However, amendments 16 and 21 include provision that a statement that will be required to be included on all listings provided on an electronic listings provider's website or other electronic medium, will be prescribed by regulation. This may be considered to be an inappropriate delegation of legislative power. This potential breach of fundamental legislative principles is considered justified and appropriate in this circumstance as the particular matters comprising the statement are administrative in nature and may be subject to change over time, including based on feedback that may be received from the community about the effectiveness of the statement in alerting buyers to the fact that agents can not disclose a price guide for an offered property that is going to auction.

In addition, the amendment to clause 80 raises a possible breach of the fundamental legislative principle that legislation is required to have sufficient regard to the institution of Parliament (*section 4(2) of the Legislative Standards Act 1992*). More specifically, it could be argued that the amendment to clause 80 to allow a regulation to prescribe circumstances where a licence may be issued or renewed for a shorter term than that specified in clause 80 enables the application of the primary legislation to be affected by subordinate legislation or executive action (that is, the amendment may amount to a 'Henry VIII' clause).

The possible breach of fundamental principles is considered justified for the following reasons.

Under clause 80, a licence may be issued for a 1-year or 3-year term. However, there are a range of practical circumstances where it is both appropriate, and in the interests of licensees and government, for the legislation to provide administrative flexibility for licences to be issued for a shorter term.

For example, the particular operations or structure of a regulated business can be complex and may mean that multiple individual or corporate licences are held in relation to the business. In some cases, these licences will be applied for (and therefore issued) at different times, resulting in different expiry dates applying to the licences.

By providing capacity to issue licences for a shorter term than the prescribed 1 or 3 year period, the amendment will allow the Office of Fair Trading to align expiry dates applying to the licences, thereby streamlining and reducing costs for both licensees and government associated with licence renewal processes.

The amendment to clause 80 promotes administrative efficiency in the licensing process. By allowing the circumstances under which a licence may be issued for a shorter term to be prescribed by regulation, the amendment will enable the licensing framework to be responsive to the needs of regulated businesses while also ensuring transparency about when shorter terms can be applied to licences by the chief executive.

No additional fundamental legislative principles not considered in relation to the *Youth Justice and Other Legislation Amendment Act 2014* arise in relation to the proposed amendments to the *Youth Justice Act 1992*.

Consultation

The amendments to the property-related provisions of the Bill are consistent with the existing policy objectives of the Bill. The amendments principally stem from issues that were identified by the government post introduction of the Bill and by the Legal Affairs and Community Safety Committee during its examination of the Bill. The Legal Affairs and Community Safety Committee sought comment on the Bill by inviting written submissions from all Queenslanders and holding a public hearing.

Targeted consultation was undertaken with stakeholders on the amendments relating to real estate website portals that are used by buyers to search for real property that is for sale.

Consultation on the introduction into the *Youth Justice Act 1992* of the administrative transfer process was conducted as part of the development and passage of the *Youth Justice and Other Legislation Amendment Act 2014*. As the current amendments to the *Youth Justice Act 1992* simply clarify the intended operation of this existing statutory process, no further consultation has been conducted on this matter.

NOTES ON PROVISIONS

Amendment 1**Clause 2 (Commencement)**

Amendment 1 amends clause 2 to provide that the Bill, other than new part 15A, commences on proclamation. Part 15A clarifies the operation of an existing statutory process under the *Youth Justice Act 1992*, and as such, is required to commence on assent.

Amendment 2**Clause 6 (Administrators etc)**

Amendment 2 amends clause 6 of the Bill by replacing subclause (3) with a subclause which provides that for subsection (2), the provisions are:

- a. sections 84 and 85; and
- b. part 3, division 2; and
- c. sections 97, 100 and 102.

Amendment 3**Clause 80 (Term of licence)**

Amendment 3 amends clause 80 of the Bill by inserting a new subclause which provides that a regulation may prescribe the circumstances under which a licence may be issued or renewed for a shorter term. For example, a licence may be issued for a shorter term to ensure multiple licences held by the same person expire on the same day.

Amendment 4**Clause 106 (Other requirements—statement that appointment may be revoked by notice)**

Amendment 4 amends clause 106 of the Bill by inserting reference to an open listing to ensure the provision does not apply to open listings. This is because clause 20 provides the for the revocation of an open listing

Amendment 5**Clause 113 (Assignment of appointment)**

Amendment 5 amends clause 113 of the Bill by inserting the words ‘unless the client and the assignee agree, in writing, to an earlier day for the appointment to end’ after the words ‘the appointment may be revoked by the client by giving at least 30 days written notice of the revocation to the assignee’, which is required to be included in the notice given by the assignee within 14 days after an assignment.

Amendment 6**Clause 114 (Revocation of appointment)**

Amendment 6 amends clause 114 of the Bill by inserting reference to an open listing to ensure the provision does not apply open listings. This is because clause 20 provides for the revocation of an open listing at anytime by either party.

Amendment 7**Clause 114 (Revocation of appointment)**

Amendment 7 amends clause 114 of the Bill to insert two new subclauses. Subclause (1A) provides that despite any agreement to the contrary by the parties to an appointment of a property agent or resident letting agent, a party is only required to give the other party to the appointment at least 30 days written notice of the revocation, unless both parties agree in writing to an earlier day for the appointment to end.

Subclause (1B) provides that a provision of an agreement is void if it requires a party to an appointment of a property agent or resident letting agent to give a notice of revocation of the appointment to the other party to the appointment other than in accordance with new subclause (1A).

Amendment 8 **Clause 137 (Offence to sell, lend or borrow registration certificate)**

Amendment 8 amends clause 137 of the Bill to replace the term 'licence' with the term 'registration certificate' as the clause is intended to provide that it is an offence to sell, lend or borrow a registration certificate. Clause 65 of the Bill provides that it is an offence to sell, lend or borrow a licence.

Amendment 9 **Clause 142 (Immediate suspension)**

Amendment 9 amends clause 142 of the Bill to provide that if the chief executive reasonably believes a subagent has contravened the *Property Agents and Motor Dealers Act 2000* the chief executive may suspend the subagent's registration.

Amendment 10 **Clause 142 (Immediate suspension)**

Amendment 10 amends clause 142 of the Bill to ensure the numbering of the provision is correct.

Amendment 11 **Clause 204 (Orders District Court may make)**

Amendment 11 amends clause 204 of the Bill to ensure the clause is correctly numbered.

Amendment 12 **Clause 207 (Misleading conduct)**

Amendment 12 amends clause 207 of the Bill to provide for the correct title of Part 9 (QCAT Proceedings) for the cross reference in the *notes*.

Amendment 13 **Clause 208 (Unconscionable conduct)**

Amendment 13 amends clause 208 of the Bill to provide for the correct title of Part 9 (QCAT Proceedings) for the cross reference in the *notes*.

Amendment 14 **Clause 209 (False representations and other misleading conduct relating to residential property)**

Amendment 14 amends clause 209 of the Bill to provide for the correct title of Part 9 (QCAT Proceedings) for the cross reference in the *notes*.

Amendment 15 **Clause 214 (Auctioneer not to disclose reserve or other price)**

Amendment 15 amends clause 214 by replacing the words 'or may be' with the words 'may be or is being' in subclause (1). This amendment ensures the section applies if residential property is to be, may be, or is being offered for sale by auction.

Amendment 16 **Clause 214 (Auctioneer not to disclose reserve or other price)**

Amendment 16 amends clause 214 of the Bill by inserting subclause (2A), which provides that if during the auction, the reserve price is reached or exceeded, the auctioneer does not contravene subsection (2) only by disclosing, to persons present at the auction, that the reserve price has been met. An example of a disclosure that the reserve price has been met is the auctioneer announcing during the auction that the property is on the market.

Amendment 16 also amends clause 214 of the Bill by inserting subclause (2B), which provides that an auctioneer does not contravene subsection (2)(c) only because a price or price range for the property is disclosed by the auctioneer to an electronic listings provider to

Amendment 23 **Clause 228 (Power of court for particular offences)**

Amendment 23 amends clause 228 of the Bill to provide for the correct cross reference by replacing reference to section '219(4)' with reference to section 219(1) of the Bill.

Amendment 24 **Clause 236 (Regulation-making power)**

Amendment 24 amends clause 236 of the Bill by replacing the term 'entities' with the term 'persons'.

Amendment 25 **Clause 249 (Existing appointments to act as agent)**

Amendment 25 amends clause 249 of the Bill to ensure the correct name of the prospective Motor Dealers and Chattel Auctioneers Act is referenced in column 2 of the table.

Amendment 26 **Clause 249 (Existing appointments to act as agent)**

Amendment 26 amends clause 249 of the Bill to remove the definition of 'goods' as the definition of 'goods' has been included in Schedule 3 (Dictionary) of the Bill.

Amendment 27 **After clause 250—**

Amendment 27 inserts new clause 250A (Chief executive may accept PAMDA forms) into the Bill which provides that instead of an approved form under an Agents Act, the chief executive may accept:

- a. for an application relating to a transitioned licence, the PAMDA form for the corresponding application for the existing licence to which the transitioned licence relates; and
- b. for an application relating to a transitioned certificate, the PAMDA form for the corresponding application for the existing registration certificate to which the transitioned certificate relates.

For the purposes of this new clause, a *PAMDA form* means an approved form under PAMDA in force immediately before the commencement.

Amendment 28 **Clause 263 (Return of beneficial interest if in form of commission)**

Amendment 28 amends clause 263 of the Bill to provide for the correct cross reference by replacing the table entry for 'PAMDA, section 221(2) or (3)' with 'PAMDA, section 222(2) or (3)'.

Amendment 29 **Clause 265 (Buyer's rights if notice about land not given or materially defective continue)**

Amendment 29 amends clause 265 of the Bill by inserting reference to clause 227 of the PAMDA to ensure that section 227 of the PAMDA also continues to apply to a contract for the sale of land entered into before the commencement as if the PAMDA had not been repealed.

Amendment 30 **Clause 271 (Refund of fees paid under PAMDA)**

Amendment 30 amends clause 271 of the Bill by ensuring regulations made under each of the Agents Acts may provide for the refunding of fees paid under PAMDA.

Amendment 31 **After clause 282—**

Amendment 31 inserts a new part 15A into the Bill to amend the *Youth Justice Act 1992*. New part 15A consists of the following provisions:

- a. New clause 282A, which provides that this part amends the *Youth Justice Act 1992*.
- b. New clause 282B, which amends section 363 (Application of amendments about transfer direction for a child who will turn 17 years) to insert a new subsection (2A) and to make the operation of section 363 subject to new subsection (2A).

Section 363 was inserted into the *Youth Justice Act 1992* to apply new part 8, division 2A—which provides for the administrative transfer from youth detention to adult corrections of offenders who, on turning 17, have at least six months left to serve in detention—to children already in detention at commencement.

New subsection 363(2A) provides that, in applying part 8, division 2A to this cohort, the requirement on the chief executive to issue a prison transfer direction within 28 days of the child's sentence to a period of detention is taken to be a requirement to issue the direction either before or as soon as practicable after commencement of subsection 363(2A). This has the effect of clarifying that the administrative transfer process under part 8, division 2A applies equally to a child to whom section 363 applies even where the direction under which they are to be transferred is issued more than 28 days after their sentence.

- c. New clause 282C, which amends section 364 (Application of amendments about transfer direction for a person who is 17 years) to insert a new subsection (3) dealing with several matters.

Section 364 was inserted into the *Youth Justice Act 1992* to apply new part 8, division 2A—which provides for the administrative transfer from youth detention to adult corrections of offenders who are 17 or older on being sentenced to a period of detention of at least six months—to offenders 17 years and older who were already in detention at commencement. New subsection 364(3) provides that, in applying part 8, division 2A to this cohort:

- i. A reference in section 276C to a 'child' includes a reference to a person to whom section 364 applies. As section 276C requires the chief executive to give a prison transfer direction to an affected child and to transfer the child under the direction, this has the effect of clarifying that the section applies equally to a person who is 17 or older and therefore no longer a child for the purposes of the *Youth Justice Act 1992*.
- ii. The requirement on the chief executive to issue a prison transfer direction within 28 days of an affected person's sentence to a period of detention is taken, for a person to whom section 364 applies, to be a requirement to issue the direction either before or as soon as practicable after commencement of subsection 364(3). This has the effect of clarifying that the administrative transfer process under part 8, division 2A applies equally to this cohort even where the direction under which they are transferred is issued more than 28 days after their sentence.
- iii. A reference to the 'transfer day' is taken, for a person to whom section 364 applies, to be a reference to the commencement of subsection 364(3). The 'transfer day' is defined, for a child to whom part 8, division 2A applies, as the day on which the child turns 17. This is the day on or as soon as practicable after which the child is required to be transferred from youth detention to adult corrections. As the 17th birthday of a person to whom section 364 applies has by definition already passed, new subsection

