

# **Evidence Amendment Regulation 2025**

Explanatory notes for SL 2025 No. 77

Made under the

*Evidence Act 1977*

## **General Outline**

### **Short Title**

*Evidence Amendment Regulation 2025*

### **Authorising law**

Sections 103ZZD and 135 of the *Evidence Act 1977*

### **Policy objectives and the reasons for them**

The purpose of the *Evidence Amendment Regulation 2025* (the Amendment Regulation) is to expand the pilot of the sexual offence expert evidence panel by prescribing the Childrens Court in Brisbane and Townsville as places for relevant proceedings.

As part of the affirmative model of consent introduced by the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024*, a pilot of the sexual offence expert evidence panel was established under the *Evidence Act 1977* (Evidence Act) to facilitate the provision of expert evidence in relation to the defence of mistake of fact as to consent under section 348A of the Criminal Code.

This expert evidence is required if an accused is to rely on the defence of mistake of fact as to consent but did not, immediately before or at the time of the act, say or do anything to ascertain whether the complainant consented to the act. If an accused failed to say or do anything in these circumstances, the defence of mistake of fact as to consent will only be available if the accused can prove at the time of the act they had a cognitive or mental health impairment which was a substantial cause of the accused not saying or doing anything (section 348A(4) of the Criminal Code).

Members on the sexual offence expert evidence panel can be engaged by parties to provide evidence in a relevant proceeding, which is defined in section 103ZZD of the Evidence Act as a criminal proceeding:

- for an offence against a provision of Chapter 32 of the Criminal Code;
- in which the matters mentioned in section 348A(4) of the Criminal Code are likely to be relevant; and
- held before a court at a place prescribed by regulation.

Expanding the pilot to include the Childrens Court at the pilot locations will allow members of the sexual offence expert evidence panel to be engaged by parties to a criminal proceeding for a Chapter 32 offence relating to a child accused who may have a cognitive or mental health impairment.

## **Achievement of policy objectives**

The policy objective is achieved by prescribing the Childrens Court in Brisbane and Townsville as places for the purpose of the definition of a 'relevant proceeding' in section 103ZZD of the Evidence Act.

## **Consistency with policy objectives of authorising law**

The Amendment Regulation is consistent with the policy objectives of the Evidence Act.

## **Inconsistency with policy objectives of other legislation**

The Amendment Regulation is not inconsistent with the policy objectives of other legislation.

## **Benefits and costs of implementation**

The Amendment Regulation supports the operationalisation of the pilot of the sexual offence expert evidence panel by ensuring that child and adult defendants are provided the same access to expert witnesses in the pilot locations.

The pilot will be reviewed as part of the statutory review of legislative reforms made in response to the recommendations of the Women's Safety and Justice Taskforce (see Part 2 of the *Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Act 2024*). The statutory review will consider the outcomes of the amendments, the effects of the amendments on victims and perpetrators of sexual violence and domestic and family violence, the outcomes for and the effects of the amendments on Aboriginal and Torres Strait Islander peoples, and whether the amendments are operating as intended.

Any costs for government associated with extending the pilot to include the Childrens Court will be funded from within existing resources.

## **Consistency with fundamental legislative principles**

The Amendment Regulation is consistent with fundamental legislative principles.

## **Consultation**

Heads of Jurisdiction (including the Chief Justice, the Chief Judge and the Chief Magistrate) were consulted.

An Impact Analysis Statement has been prepared which identifies that the Amendment Regulation is not subject to regulatory impact assessment requirements under the *Queensland Government Better Regulation Policy* as it is a regulatory proposal that is machinery in nature.