

# Evidence Amendment Regulation 2025

## Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019* (HR Act), I, the Honourable Deb Frecklington MP, Attorney-General and Minister for Justice and Minister for Integrity, provide this human rights certificate with respect to the *Evidence Amendment Regulation 2025* (Amendment Regulation) made under the *Evidence Act 1977* (Evidence Act).

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

### Overview of the Subordinate Legislation

The Amendment Regulation expands the pilot of the sexual offence expert evidence panel to the Childrens Court of Queensland and Childrens Court (Magistrates Court) in Brisbane and Townsville.

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 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, that is, criminal proceedings 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 of Queensland and Childrens Court (Magistrates 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.

## Human Rights Issues

### Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 HR Act)

The Amendment Regulation does not limit human rights.

The Amendment Regulation promotes equal protection before the law (section 15) as it affords child defendants the same access to the sexual offence expert evidence panel that is available to an adult defendant in criminal proceedings for an offence against a provision in Chapter 32 of the Criminal Code in the pilot locations. This is important as child defendants may have a more pressing need to access expert evidence to ascertain if they have a cognitive or mental health impairment in circumstances where they are still experiencing cognitive development and may not have had the opportunity to receive professional care, or a diagnosis, compared to adult defendants.

## Conclusion

I consider that the Amendment Regulation is compatible with the HR Act because it does not limit human rights.

**DEB FRECKLINGTON MP**  
Attorney-General and Minister for Justice  
Minister for Integrity

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