

Planning and Environment Court (Expert Evidence) Amendment Rule 2022

Explanatory notes for SL 2022 No. 18

made under the

Planning and Environment Court Act 2016

General Outline

Short title

Planning and Environment Court (Expert Evidence) Amendment Rule 2022

Authorising law

Section 13 of the *Planning and Environment Court Act 2016*

Policy objectives and the reasons for them

The objectives of the *Planning and Environment Court (Expert Evidence) Amendment Rule 2022* (Amendment Rule) are to:

- set out requirements for the preparation of expert reports, including provision for the preparation of a supplementary report and actions relating to the supplementary report where there is a change of opinion by the expert;
- clarify that particular rules about costs in the *Uniform Civil Procedures Rules 1999* (UCPR) do not apply to the Planning and Environment Court (P&E Court) as the UCPR provisions are contrary to the intent of the costs rules that apply in the P&E Court, noting there is no change to the costs rules that apply in the P&E Court as a result of the proposed amendments;
- provide for specific rules about evidence, including that expert evidence must be given in person before the P&E Court unless required to be given by audio visual link or audio link in particular circumstances, to negate the effect of section 39PB of the *Evidence Act 1977* as that provision is not followed in the P&E Court; and
- include an expert witness code of conduct consistent with the new schedule in the UCPR.

Achievement of policy objectives

Through a separate process, the UCPR have been amended. The UCPR are for general civil litigation and apply in the Supreme, District and Magistrates Courts. The Planning and Environment Court Rules are more specific than the UCPR and apply to a P&E Court proceeding. If a matter in relation to a P&E Court proceeding is not covered by the Planning and Environment Court Rules, then the UCPR apply with the necessary changes.

The policy objectives of the Amendment Rule are to ensure that the operation and procedures of the P&E Court are not disrupted or compromised by the broader amendments that have been made to the UCPR.

Consistency with policy objectives of authorising law

The Amendment Rule is consistent with the policy objectives of the *Planning and Environment Court Act 2016* to govern the constitution, composition, jurisdiction and powers of the P&E Court. The Amendment Rule supports the procedures to ensure the Court's efficient operation and its role as a specialised court to hear planning and environment disputes.

Inconsistency with policy objectives of other legislation

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

Alternative ways of achieving policy objectives

Amending the Planning and Environment Court Rules is the only way to provide for the efficient operation of the P&E Court. If the Rules were not amended, there would be inconsistencies that would create disruptions to the ability of the Court to hear and decide planning and environment disputes.

Benefits and costs of implementation

The Amendment Rule ensures the continued efficient operation of the P&E Court. The amendments are to existing provisions of the Planning and Environment Court Rules to reflect how the P&E Court operates and to clarify terms that are specific to that Court.

The Amendment Rule also includes a new schedule to set out the code of conduct expected of expert witnesses. The expert witness process is critical to, and a large part of the P&E Court proceedings and this schedule provides clarity to ensure proceedings are not compromised.

There are no additional costs as a result of the amendments.

Consistency with fundamental legislative principles

The Amendment Rule has been drafted with regard to the fundamental legislative principles (FLPs) as defined in section 4 of the *Legislative Standards Act 1992*. There are no inconsistencies with the FLPs.

Consultation

Section 13 of the *Planning and Environment Court Act 2016* provides that the Planning and Environment Court Rules can only be changed with the concurrence of the Chief Judge and a P&E Court Judge. This concurrence has been provided.

The Department of State Development, Infrastructure, Local Government and Planning made a self-assessment of the Amendment Rule under the Queensland Government *Guide to Better Regulation* and determined the Amendment Rule is an agency-assessed exclusion from the regulatory impact assessment process, category (j). This category is for a regulatory proposal that relates to the administration of court proceedings; changes to rules relating to the administration of courts and tribunals.