

# **Statutory Declarations Amendment Regulations 2004 (No. 1) 2004 No. 262**

## EXPLANATORY STATEMENT

Statutory Rules 2004 No. 262

### STATUTORY DECLARATIONS AMENDMENT REGULATIONS 2004 (NO. 1)

Issued by the Authority of the Attorney-General

#### *Statutory Declarations Act 1959*

Section 14 of the *Statutory Declarations Act 1959* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed, and necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 8 of the Act provides, among other things, that a statutory declaration made under the Act must be made in the form in the Schedule to the Act. When they commence operation, items 55 and 56 of Schedule 1 to the *Law and Justice Legislation Amendment Act 2004* (the Amendment Act) will amend the Act to provide that a statutory declaration is instead to be made in the prescribed form.

Items 55 and 56 of Schedule 1 to the Amendment Act will commence operation on a day fixed by Proclamation or, if a date is not proclaimed, on the first day after six months has elapsed from the day on which the Amendment Act received the Royal Assent. The Amendment Act received the Royal Assent on 26 May 2004.

The purpose of the Regulations is to amend the *Statutory Declarations Regulations 1993* (the Principal Regulations) to prescribe a new form for making a statutory declaration and to update the list of persons before whom a statutory declaration may be made.

New regulation 3 provides that the form for making a statutory declaration appears in a new Schedule 1 to the Principal Regulations. The form prescribed by the Regulations is drafted in a plain language style to make it clearer and more accessible to the general public.

The Regulations contain a transitional provision that allows either the new form or the existing form to be used to make a statutory declaration until 31 December 2005. The transitional provision has been included so that the significant number of unused commercially printed statutory declaration forms still in existence will not all go to waste.

Section 8 of the Act provides that a statutory declaration made under the Act must be made before a prescribed person.

New regulation 4 is in similar terms to the existing regulation 3 of the Principal Regulations and prescribes the persons before whom a statutory declaration may be made.

New paragraph 4(a) stipulates that a person who is currently authorised under a law in force in a State or Territory to practise as a member of a profession listed in Part 1 of a new Schedule 2 to the Principal Regulations may witness a statutory declaration. However, new paragraph 4(b) ensures that legal practitioners who are enrolled on the roll of a Supreme Court of a State or Territory or the High Court, but who do not hold a practising certificate and therefore do not

qualify under paragraph 4(a), may witness a statutory declaration. New paragraph 4(c) prescribes the other persons who may witness a statutory declaration as being those listed in Part 2 of new Schedule 2.

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The Schedule to the Principal Regulations contains a list of prescribed persons authorised to witness statutory declarations. New Schedule 2 re-makes the Schedule and, consistent with current drafting practice, assigns an item number to each entry in the list. The existing entries for 'Civil marriage celebrant' and 'Minister of religion registered under Division 1 of Part IV of the *Marriage Act 1961*' are amended to be consistent with the terminology now used in that Act.

Representations have been received requesting that optometrists be added to the list of prescribed persons who may witness statutory declarations. The representations that were received established that there was an unmet call for optometrists to be able to witness statutory declarations in the community. The Regulations meet this unmet demand by adding optometrists to the list of prescribed persons authorised to witness statutory declarations.

The Act specifies no conditions that need to be met before the power to make the Regulations may be exercised.

Subsections 4(1) and (2A) of the *Acts Interpretation Act 1901*, read together, provide that regulations may be made between the passing and commencement of legislation upon which those regulations rely for their authority, as long as such regulations are expressed to commence no earlier than the legislation.

The Regulations will commence on the commencement of items 55 and 56 of Schedule 1 to the Amendment Act. Those items will not be commenced by Proclamation and therefore will commence six months after the day on which the Amendment Act received the Royal Assent, that is, 26 November 2004.