

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2005 No. 267**

**Issued by the Authority of the Attorney-General**

*Statutory Declarations Act 1959*

*Statutory Declarations Amendment Regulations 2005 (No. 1)*

The *Statutory Declarations Act 1959* (the Act) establishes a regime for Commonwealth statutory declarations, including the purposes for which a statutory declaration may be used, how a statutory declaration is made and the penalty for intentionally making a false declaration.

Section 14 of 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, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

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

The purpose of the Regulations is to allow the continued use of a prescribed form until 30 June 2006 and to update the list of persons before whom a statutory declaration may be made.

Prior to 26 November 2004, section 8 of the Act provided that a statutory declaration must be made in the form specified in the Schedule to the Act. With effect from 26 November 2004, section 8 of the Act was amended by items 55 and 56 of Schedule 1 to the *Law and Justice Legislation Amendment Act 2004* to provide that a statutory declaration is instead to be made in the prescribed form.

Also with effect from 26 November 2004, regulation 3 of the *Statutory Declarations Regulations 1993* (the Principal Regulations) has prescribed two forms for making a statutory declaration:

- the form in Schedule 1 to the Principal Regulations (the new form); and
- as a transitional measure, until 31 December 2005, the form that was set out in the Schedule to the Act (the previous form).

The Principal Regulations also prescribe the persons before whom a statutory declaration can be made.

It has become evident that awareness of the new form, which came into effect on 26 November 2004, is limited. More time is required for organisations and individuals to put in place changes to their procedures or publications to incorporate the new form of the statutory declaration. The Regulations allow organisations and individuals a further six months in which to make the necessary changes. This is achieved by extending the prescribed cessation date for the previous form from 31 December 2005 to 30 June 2006.

In addition, a representation has been received requesting that a member of the Australasian Institute of Mining and Metallurgy be added to the list of prescribed persons who may witness statutory declarations. The representation established that there was an unmet need in the community for members of this Institute to be able to witness statutory declarations. This need arises from the difficulty in remote mining locations of finding a person who can witness a statutory declaration. The Regulations satisfy this demand by adding members of the Australasian Institute of Mining and Metallurgy to the list of prescribed persons authorised to witness statutory declarations.

Details of the Regulations are set out in the Attachment.

The Act does not specify any conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Office of Regulation Review was consulted about the Regulations and advised that a Regulation Impact Statement was not mandatory as the Regulations do not have a direct or significant indirect effect on business. No further consultation has been undertaken for this legislative instrument because the amendments are of a minor or machinery nature only and do not substantially alter existing arrangements.

The Regulations commence the day after they are registered on the Federal Register of Legislative Instruments.

**ATTACHMENT****Details of the *Statutory Declarations Amendment Regulations 2005 (No. 1)*****Regulation 1 – Name of Regulations**

This regulation provides that the title of the Regulations is the *Statutory Declarations Amendment Regulations 2005 (No. 1)*

**Regulation 2 – Commencement**

This regulation provides for the Regulations to commence on the day after they are registered.

**Regulation 3 – Amendment of *Statutory Declarations Regulations 1993***

This regulation provides that the *Statutory Declarations Regulations 1993* (the Principal Regulations) are amended as set out in Schedule 1.

**Schedule 1 – Amendments****Item [1] – Subregulation 3(2)**

Subregulation 3(2) specifies the date until which the previous form continues to be a prescribed form for the purposes of section 8 of the Act. This amendment changes the date from 31 December 2005 to 30 June 2006, thereby allowing a further six months in which the previous form can continue to be used, along with the new form.

**Item [2] – Schedule 2, Part 2, after Item 237**

Schedule 2 to the Principal Regulations lists persons before whom a statutory declaration may be made. This item adds a member of the Australasian Institute of Mining and Metallurgy to the list of prescribed persons.