



In most situations across Patent, Trade Mark and Design legislation where a declaration is required, a **statutory declaration** under either state or territory legislation or the *Statutory Declarations Act 1959* is **not necessary**. A **declaration** witnessed under the regulations of the *Patents Act 1990*, *Trade Marks Act 1995* or *Designs Act 2003* is sufficient. (The *Plant Breeder's Rights (PBR) Act 1994* does not include similar provisions.)

What's the difference?

A statutory declaration under state or territory legislation or the *Statutory Declarations Act 1959* is a written statement declared before, and witnessed by, a specific class of authorised officials, such as a justice of the peace, etc. Where a statutory declaration is made the person making the declaration is subject to the state or territory legislation or the *Statutory Declaration Act 1959* and any penalties arising from that Act.

In comparison, a declaration required as part of the administration of IP Rights only needs to be a declaration witnessed under the regulations of the relevant act. It can be witnessed by a different group as defined by the relevant legislation and does not need to refer to the state or territory legislation or the *Statutory Declarations Act 1959*.

The exception is where someone is seeking registration as a Patent or Trade Mark Attorney where a statutory declaration under the *Statutory Declarations Act 1959* is required stating amongst other things, that they are of good character etc.

Where does it set out what's required in a Declaration under the Patents, Trade Marks or Designs Acts?

The regulations of each act set out the requirements for a declaration under that act:

- *Patents Regulations 22.12* and *22.13* provides requirements on declarations required by the *Patent Act 1990* or *Patents Regulations 1991*
- *Trade Mark Regulations 21.6* and *21.7* provides requirements on declarations required by the *Trade Marks Act 1995* and *Trade Mark Regulations 1995*
- *Designs Regulations 11.26* provides requirements on declarations required by the *Designs Act 2003* and *Designs Regulations 2004*
- *Patents Regulations 1991 - 20.3* and *Trade Marks Regulations 1995 - 20.3* relate to declarations where someone is seeking registration as a Patent or Trade Mark Attorney

See http://www.ipaustralia.gov.au/resources/legislation_index.shtml for links to the legislation.

Forms

A form for a declaration under the relevant acts is available from our website.

Patents Declaration Form - <http://www.ipaustralia.gov.au/pdfs/patents/applications/P00057.pdf>

Trade Marks Declaration Form - <http://www.ipaustralia.gov.au/pdfs/trademarks/other/TM01054.pdf>

Designs Declaration form - http://www.ipaustralia.gov.au/pdfs/designs/applications/D000318_0109.fh11.pdf

