

## Persons who can receive affidavits

Section 123C of the *Evidence (Miscellaneous Provisions) Act 1958* (as of 24 August 2011), (previously *Evidence Act 1958*), reads:

### Affidavits in Victoria how sworn and taken

- (1) Affidavits for use in any court or for any purpose or in any way whatsoever authorised by law whether by or under any Act of Parliament or by custom or otherwise may be sworn and taken within Victoria before—
  - (a) any judge or the associate to any judge;
  - (b) an Associate Judge of the Supreme Court or the associate to such Associate Judge;
  - (ba) an Associate Judge of the County Court or the associate to such Associate Judge;
  - (c) a justice of the peace or a bail justice;
  - (d) the prothonotary or a deputy prothonotary of the Supreme Court, the registrar or a deputy registrar of the County Court, the principal registrar of the Magistrates' Court or a registrar or deputy registrar of the Magistrates' Court;
  - (da) the registrar of probates or an assistant registrar of probates;
  - (db) a senior member or ordinary member of the Victorian Civil and Administrative Tribunal who, immediately before the commencement of section 8.2.1 of the *Legal Profession Act 2004*, was the registrar or a deputy registrar of the Legal Profession Tribunal;
  - (e) a member or former member of either House of the Parliament of Victoria;
  - (ea) a member or former member of either House of the Parliament of the Commonwealth;
  - (f) a public notary;
  - (g) a legal practitioner;
  - (ga) a member of the police force of or above the rank of sergeant or for the time being in charge of a police station;
  - (gb) a person employed under Part 3 of the *Public Administration Act 2004* with a classification that is prescribed as a classification to which this section applies;
  - (gc) a senior officer of a Council as defined in the *Local Government Act 1989*;
  - (gd) a person registered as a patent attorney under Chapter 20 of the Patents Act 1990 of the Commonwealth;
  - (ge) a fellow of the Institute of Legal Executives (Victoria);
  - (h) any officer or person empowered authorized or permitted by or under any Act of Parliament to take affidavits in relation to the matter in question or in the particular part of Victoria in which the affidavit is sworn and taken.
- (2) All courts and persons acting judicially shall take judicial and official notice of the seal or signature of any of the persons referred to in subsection (1) attached or appended to any affidavit within the meaning of that subsection.
- (3) The person before whom an affidavit is sworn or taken must legibly write, type or stamp his or her name and address below his or her own signature where it appears on the affidavit.

Penalty applying to this subsection: 1 penalty unit.

## Persons who can witness statutory declarations

Section 107A of the *Evidence (Miscellaneous Provisions) Act 1958* (as of 24 August 2011), (previously *Evidence Act 1958*), reads:

- (1) Any of the following persons may witness the signing of a statutory declaration:
  - (a) a justice of the peace or a bail justice;
  - (b) a public notary;
  - (c) an Australian lawyer (within the meaning of the *Legal Profession Act 2004*);
  - (d) a clerk to an Australian lawyer;
  - (e) the prothonotary or a deputy prothonotary of the Supreme Court, the registrar or a deputy registrar of the County Court, the principal registrar of the Magistrates' Court or a registrar or deputy registrar of the Magistrates' Court;
  - (f) the registrar of probates or an assistant registrar of probates;
  - (g) the associate to a judge of the Supreme Court or of the County Court;
  - (h) the the associate of an Associate Judge of the Supreme Court or of an associate judge of the County Court;
  - (i) a person registered as a patent attorney under Chapter 20 of the Patents Act 1990 of the Commonwealth;
  - (j) a member of the police force;
  - (k) the sheriff or a deputy sheriff;
  - (l) a member or former member of either House of the Parliament of Victoria;
  - (m) a member or former member of either House of the Parliament of the Commonwealth;
  - (n) a councillor of a municipality;
  - (o) a senior officer of a Council as defined in the *Local Government Act 1989*;
  - (p) a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student);
  - (q) a person registered under the Health Practitioner Regulation National Law—
    - (i) to practise in the dental profession as a dentist (other than as a student); and
    - (ii) in the dentists division of that profession;
  - (r) a veterinary practitioner;
  - (s) a person registered under the Health Practitioner Regulation National Law to practise in the pharmacy profession (other than as a student);
  - (t) a principal in the teaching service;
  - (u) the manager of an authorised deposit-taking institution;
  - (v) a member of the Institute of Chartered Accountants in Australia or the Australian Society of Accountants or the Institute of Public Accountants;
  - (w) the secretary of a building society;
  - (x) a minister of religion authorised to celebrate marriages;
  - (y) a person employed under Part 3 of the *Public Administration Act 2004* with a classification that is prescribed as a classification to which this section applies or who holds office in a statutory authority with such a classification;
  - (z) a fellow of the Institute of Legal Executives (Victoria).
- (2) Despite anything to the contrary in any Act, a person referred to in paragraph (c) or (d) of subsection (1) is not prevented from witnessing the signing of a statutory declaration only because he or she is—
  - (a) acting for any of the parties to the proceeding or matter in respect of which the declaration is made; or
  - (b) a clerk to a person so acting.
- (3) If the signing of a statutory declaration purports to have been witnessed by a person referred to in subsection (1), all persons to whom that declaration comes must take official notice of that declaration and of the qualifications of the person referred to in that subsection to witness that signing.