**Information Notice**

**Act Title** **Evidence (Miscellaneous Provisions) Act 1958**

**Information Title:** **Retrospective Commencement**

**Version:** **175**

The insertion of section 165 by section 5 of the **Evidence (Miscellaneous Provisions) Amendment (Affidavits) Act 2012**, No. 4/2012 is deemed to have come into operation on 12 November 2011.

Section 5 reads as follows:

5 New section 165 inserted

After section 164 of the Principal Act **insert**—

"165 Validation of certain acts and documents

(1) If an affidavit signed before 12 November 2011 by a person and by a person duly authorised to administer oaths contains words indicating that the first person states that the affidavit is made on oath or affirmation—

(a) it is not, and was not at any time, necessary that—

(i) the oath or affirmation be made orally; or

(ii) the first person signed the affidavit in the presence of the person duly authorised to administer oaths; or

(iii) the person duly authorised to administer oaths signed the affidavit in the presence of the first person; or

(iv) if the first person signed the affidavit in the presence of a person duly authorised to administer oaths, the person so authorised observed the person signing the affidavit; or

(v) the affidavit contained the statement required by section 126; and

(b) the words indicating that the first person states that the affidavit was made on oath or affirmation are and are taken always to have been effective by way of oath or affirmation even if anything referred to in paragraph (a)(i) to (v) was not done or did not occur.

(2) A warrant, an order, a summons or other process issued or made by a court or a judicial officer in reliance, directly or indirectly, on an affidavit referred to in subsection (1) is not invalid only by reason of the fact that, but for subsection (1), the affidavit would not have been duly sworn or affirmed.

(3) For the purposes of the prosecution of an alleged offence, the fact that, but for subsection (1), an affidavit would not have been duly sworn or affirmed is to be disregarded in determining whether evidence obtained in reliance, directly or indirectly, on that affidavit ought to be admitted.

(4) Subject to subsection (3), this section does not limit a discretion of a court—

(a) to exclude evidence in a criminal proceeding; or

(b) to stay a criminal proceeding in the interests of justice.

(5) This section does not affect the rights of the parties in—

(a) the proceedings known as *Director of Public Prosecutions (Vic.) v. Marijancevic* (No. 264 of 2011), *Director of Public Prosecutions (Vic.) v. Preece* (No. 263 of 2011) and *Director of Public Prosecutions (Vic.) v. Preece* (No. 265 of 2011) in the Supreme Court of Victoria, Court of Appeal; or

(b) any other proceeding in which a court, before the day on which the **Evidence (Miscellaneous Provisions) Amendment (Affidavits) Act 2012** receives the Royal Assent, has made a ruling on the validity of—

(i) an affidavit referred to in subsection (1); or

(ii) a warrant, an order, a summons or a process issued or made in reliance, directly or indirectly, on an affidavit referred to in subsection (1); or

(c) any other proceeding in which a court, before the day on which the **Evidence (Miscellaneous Provisions) Amendment (Affidavits) Act 2012** receives the Royal Assent, has made a ruling on the admissibility of evidence obtained under a warrant, an order, a summons or other process issued or made in reliance, directly or indirectly, on an affidavit that, but for subsection (1), would not have been duly sworn or affirmed.

(6) In this section ***affidavit*** includes a document purporting to be an affidavit.".

The amendment made to section 19B(2) of the **Evidence (Miscellaneous Provisions) Act 1958** by section 3(Schedule item 17.1) of the **Statute Law Revision Act 2012**, No. 43/2012 is deemed to have come into operation on 17 March 2010.

Schedule item 17.1 reads as follows:

17 Evidence (Miscellaneous Provisions) Act 1958

17.1 For section 19B(2) **substitute**—

"(2) The commissioner presiding at a hearing of a commission may make an order prohibiting the publication of a report of the whole or any part of the proceedings of a hearing or part of a hearing or of any information derived from the hearing or part of it except by, or with the leave of, the commission.".