



ANMF (Vic Branch) Policy

Witnessing a statutory declaration

A statutory declaration is a written statement in which a person formally declares before an 'authorised person' that the statement is true. Statutory Declarations can be made under Commonwealth Law or under State Law.

Commonwealth Law

A nurse can witness a statutory declaration made under the Commonwealth Law. As at November 2017, a midwife who is not also a nurse cannot witness a statutory declaration made under the Commonwealth Law.

Commonwealth statutory declarations can be used in relation to a commonwealth law, as distinct from a state or territory law. Industrial Awards and Enterprise Agreements are made under Commonwealth or Federal Law, and therefore a statutory declaration relating to enterprise agreement evidence requirements, for example personal leave and parental leave, may be witnessed by a nurse.

The *Statutory Declarations Regulations 1993* proscribe who can witness a statement made under the *Statutory Declarations Act 1959 (Commonwealth)*. Regulation 4 states that a person who, under a law in force in a State or Territory, is currently licensed or registered to practise in an occupation listed in Part 1 of Schedule 2 may witness a statutory declaration, which includes the occupation "nurse".

The *Health Practitioner Regulation National Law (Victoria) Act 2009* makes the Schedule to the *Health Practitioner Regulation National Law Act 2009 of Queensland* apply as a law of Victoria. While the National Law does not define 'nurse' it does protect the title of 'nurse', meaning only a registered health practitioner registered in the profession of 'nursing' (other than as a student) may use the title "nurse".

Victorian Law

As at November 2017, Section 107A of the *Evidence (Miscellaneous Provisions) Act 1958* does not include nurse or midwife on the list of persons who may witness statutory declarations. Consequently neither a nurse nor a midwife is an authorised person for the making of a statutory declaration in relation to a matter arising under Victorian law.

It is the policy of the Australian Nursing and Midwifery Federation (Victorian Branch) that:

1. A nurse should be fully conversant with the current laws surrounding witnessing of statutory declarations before agreeing to witness a statutory declaration. The *Statutory Declarations Act 1959* and *Statutory Declaration Regulations 1993* can be accessed via a link at www.ag.gov.au/statdec.

2. A nurse acting as a witness should do the following:
- a) Check the identity of the person making the statutory declaration (the “declarant”) by asking if he or she is the person whose name appears on the declaration.
 - b) Check, to the extent possible, that the person is competent to make the statutory declaration.
 - c) Remind the person making the statutory declaration that he or she will be claiming that the statements in the declaration (and any exhibits) are true and that there are penalties for making false statements. Under section 11 of the *Statutory Declarations Act 1959*, the penalty for making a false statement in a statutory declaration is 4 years’ imprisonment.
 - d) Check that the statutory declaration does not contain any blanks (the witness and the person declaring must provide all the information requested on the form, including name, address and occupation/qualification).
 - e) If the document is already signed, ask the person to cross out the signature and sign it afresh in your presence. Both you and the signatory must initial and date the crossing-out.
 - f) If there are exhibits or annexures to the document, you must sign and date each one, having ensured they are correctly marked. If they are not marked, ask the signatory to mark them correctly before you sign.
 - g) If there is more than one place on the document that requires signing, witness each signature separately.
 - h) After the person has signed the document in your presence, ask them: *Do you solemnly and sincerely declare that the contents of this declaration are true and correct to the best of your knowledge and belief?* The declarant must answer: *I declare or I do.*
 - i) Once you have heard this, you may initial and date every deletion and alteration in the document after the declarant has initialed them, and initial and date the foot of every page of the declaration and sign the last page near the signature of the declarant.
 - j) Witness the declaration by signing and dating the document. Clearly print your full name including your full middle name, and underneath or next to your signature write the words “registered as a nurse under the national law”.

It is important to note that the purpose of witnessing a statutory declaration does not require the nurse to assess the information provided in the statutory declaration as being correct – only that they are witnessing the signing of the statutory declaration, and that they must ensure they are entitled to witness a statutory declaration.