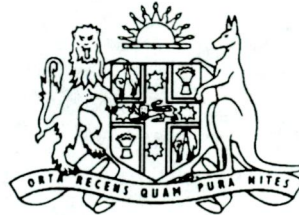


First print



New South Wales

Public Notaries Bill 1997

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to revise the law concerning the appointment and regulation of the practice of public notaries and, for this purpose, to repeal the *Public Notaries Act 1985* and to amend the *Legal Profession Act 1987* and the *Administrative Decisions Tribunal Act 1997* consequentially.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act.

Part 2 Appointment of public notaries

Clause 4 provides for the functions of the Legal Practitioners Admission Board by or under the proposed Act, and states that, in exercising those functions, the Admission Board may consult with The Society of Notaries of New South Wales Incorporated (*Society of Notaries*).

Clause 5 provides that a person cannot be appointed as a public notary unless the person is a barrister or solicitor of not less than 5 years' standing.

Clause 6 provides for the appointment and enrolment as public notaries by the Supreme Court of persons approved as suitable by the Legal Practitioners Admission Board.

Clause 7 provides for the establishment and maintenance of a roll of public notaries, and for the removal of names from the roll at the request of a public notary, if the public notary ceases to be a barrister or solicitor or if an order is made under that Act that prevents a legal practitioner who is a public notary from performing notarial work.

Clause 8 provides for the publication of information on the roll of public notaries by whichever is appropriate of the Council of the Bar Association of New South Wales or the Council of the Law Society of New South Wales.

Clause 9 provides that the Legal Practitioners Admission Board may make rules as to various matters connected with the appointment of public notaries, including qualifications, examinations, applications for appointment and approval of applications and fees.

Clause 10 provides that a person who wishes to be appointed as a public notary may appeal to the Supreme Court against a refusal by the Legal Practitioners Admission Board to approve of the person as a suitable person for appointment as a public notary.

Part 3 Regulation of conduct of notarial work

Clause 11 provides that a public notary must not carry out notarial work for the public notary's employer or a client of the employer unless the employer is a solicitor or a solicitor corporation (within the meaning of the *Legal Profession Act 1987*) or a person prescribed by the regulations, or other circumstances, prescribed by the regulations, apply.

Clause 12 provides that The Society of Notaries may prepare and publish a scale of indicative fees as a guide to fees it considers are fair and reasonable for the performance of notarial work.

Clause 13 provides for certain offences in relation to notarial work. A person who is not on the roll of public notaries must not advertise or hold out that the person is entitled, qualified, able or willing to practise as a public notary. A person who is on the roll of public notaries but who ceases to be a barrister or solicitor and practises as a public notary is also guilty of an offence.

Clause 14 provides that Part 10 of the *Legal Profession Act 1987* (which deals with complaints about and discipline of legal practitioners) applies to public notaries in the same way it applies to legal practitioners.

Part 4 Miscellaneous

Clause 15 provides that proceedings for an offence under the proposed Act or the regulations may be taken summarily before a Local Court.

Clause 16 allows regulations to be made for the purposes of the proposed Act.

Clause 17 repeals the *Public Notaries Act 1985*.

Clause 18 is a formal provision giving effect to proposed Schedule 1 containing provisions of a savings and transitional nature.

Clause 19 is a formal provision giving effect to proposed Schedule 2 containing consequential amendments to the *Administrative Decisions Tribunal Act 1997*.

Clause 20 amends the *Legal Profession Act 1987* to ensure that barristers and solicitors who are public notaries may be subject to the same types of orders by the Legal Services Tribunal concerning the performance of notarial work.

Clause 21 provides that the Minister is to conduct a review of the operation of the proposed Act 5 years after its enactment.

Public Notaries Bill 1997

Explanatory note

Schedules

Schedule 1 contains provisions of a savings and transitional nature.

Schedule 2 amends consequentially the *Administrative Decisions Tribunal Act 1997*.



New South Wales

Public Notaries Bill 1997

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New South Wales

Public Notaries Bill 1997

No. , 1997

A Bill for

An Act to provide for the appointment and regulation of the practice of public notaries; to repeal the *Public Notaries Act 1985*; to amend the *Administrative Decisions Tribunal Act 1997* and *Legal Profession Act 1987* consequentially; and for other purposes.

Clause 1 Public Notaries Bill 1997

Part 1 Preliminary

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Public Notaries Act 1997*.

2 Commencement

5

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

In this Act:

Admission Board means the Legal Practitioners Admission Board constituted under Part 2 of the *Legal Profession Act 1987*. 10

admission rules means rules made under the *Legal Profession Act 1987* by the Admission Board.

barrister has the same meaning as in the *Legal Profession Act 1987*. 15

Court means the Supreme Court of New South Wales.

exercise a function includes perform a duty.

function includes a power, authority or duty.

legal practitioner has the same meaning as in the *Legal Profession Act 1987*. 20

public notary means a person appointed and enrolled under section 6 as a public notary.

registrar means the registrar of public notaries referred to in section 7 (1).

roll means the roll of public notaries maintained under section 7. 25

Society of Notaries means The Society of Notaries of New South Wales Incorporated.

solicitor has the same meaning as in the *Legal Profession Act 1987*.

Part 2 Appointment of public notaries

4 Functions of Admission Board

- (1) The Admission Board has and may exercise the functions conferred or imposed on it by or under this Act.
- (2) In exercising those functions, the Admission Board may consult with the Society of Notaries. 5

5 Eligibility for appointment

A person cannot be appointed as a public notary unless the person is a barrister or solicitor of not less than 5 years' standing as either a barrister or solicitor. 10

6 Appointment of public notaries

- (1) The Court may appoint and enrol a person as a public notary in accordance with this section.
- (2) The Court is, on any day appointed by the Court for the purpose, to hear and determine any application made for the appointment as a public notary of a person approved by the Admission Board as a suitable candidate for appointment. 15

7 Roll of public notaries

- (1) An officer of the Court prescribed by the rules as the registrar of public notaries is to establish and maintain a roll of public notaries. 20
- (2) The registrar must enter in the roll:
 - (a) the name of each person who is appointed under this Act as a public notary, and
 - (b) the name of the person's firm (if any) and the address at which the person or the person's firm practises, and 25
 - (c) any other particulars relating to the person prescribed by the rules.
- (3) The Court may, at the request of a public notary, cause the name of the public notary to be removed from the roll. 30

- (4) If a person ceases to be a barrister or solicitor, the registrar is to remove the name of the public notary from the roll of public notaries.
- (5) If an order is made under section 171C (1) (f1) or (2) (f) of the *Legal Profession Act 1987* that a barrister or solicitor who is a public notary, or any associated solicitor corporation (within the meaning of Part 10 of that Act), cease to accept instructions in relation to notarial work, the registrar is to remove the name of the public notary from the roll of public notaries. 5
- (6) In this section, *rules* means rules of the Court. 10

8 Publication of information on roll of public notaries

- (1) The appropriate Council may, by arrangement with the registrar and in circumstances that it considers appropriate, publish the name of any legal practitioner on the roll of public notaries, the name of the legal practitioner's firm and the address at which the practitioner or the practitioner's firm practises. 15
- (2) In this section, *appropriate Council* means:
 - (a) in relation to a public notary who is a barrister—the Council of the New South Wales Bar Association, or
 - (b) in relation to a public notary who is a solicitor—the Council of the Law Society of New South Wales. 20

9 Rules for appointment of public notaries

The Admission Board may make rules for or with respect to all or any of the following:

- (a) the qualifications for appointment as a public notary, 25
- (b) without limiting paragraph (a), the examination in such branches of knowledge as the Board thinks fit of candidates for appointment as public notaries,
- (c) the approval of properly qualified persons to be appointed as public notaries, 30
- (d) applications for appointment as a public notary and the approval of such applications,
- (e) the keeping of records concerning legal practitioners named on the roll of public notaries,

-
- (f) the fees payable to the Board in relation to the examination of candidates for appointment as, and the appointment of, public notaries, and certificates of appointment of public notaries,
 - (g) any other matters relating to the exercise of its functions under this Act. 5

10 Appeals

- (1) If the Admission Board refuses to approve of a person as a suitable candidate for admission as a public notary, the person may appeal to the Court against the refusal. 10
- (2) The appeal is to be dealt with by way of rehearing and fresh evidence or evidence in addition to or substitution for the evidence before the Admission Board may be given.
- (3) A Judge is disqualified from hearing an appeal under this section if the Judge was a member of the Admission Board when it made the decision to which the appeal relates. 15
- (4) On an appeal under this section, the Court may make such order as it thinks fit.

Part 3 Regulation of conduct of notarial work

11 Employed public notaries not to carry out certain work

- (1) Except as provided by subsection (2), a public notary must not carry out notarial work for the public notary's employer or a client of the employer. 5
- (2) Subsection (1) does not apply with respect to a public notary who is employed by a solicitor or a solicitor corporation within the meaning of the *Legal Profession Act 1987* or by a person, or in circumstances, prescribed by the regulations.
- (3) For the purposes of this section, if a public notary is employed by a corporation, the corporation includes a related corporation, and **corporation** and **related corporation** have the same meanings as in the *Corporations Law*. 10

12 Fees for notarial work

The Society of Notaries may prepare from time to time, and publish in the Gazette, a scale of indicative fees as a guide to the fees that it considers are fair and reasonable fees for the performance of notarial work. 15

13 Offences

- (1) A person, other than a person named on the roll, who advertises or holds out that the person is entitled, qualified, able or willing to practise as a public notary is guilty of an offence. 20
Maximum penalty: 10 penalty units.
- (2) A person named on the roll who, while not being a barrister or solicitor, practises as a public notary is guilty of an offence. 25
Maximum penalty: 10 penalty units.

14 Application of Legal Profession Act 1987

Part 10 (Complaints and discipline) of the *Legal Profession Act 1987* applies to public notaries in the same way as it applies to legal practitioners, subject to any modifications prescribed by the regulations. 30

Part 4 Miscellaneous

15 Proceedings for offences

Proceedings for an offence against this Act or the regulations are to be taken before a Local Court constituted by a Magistrate sitting alone.

5

16 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

10

17 Repeal of Public Notaries Act 1985 No 6

The *Public Notaries Act 1985* is repealed.

18 Savings, transitional and other provisions

Schedule 1 has effect.

15

19 Amendment of Administrative Decisions Tribunal Act 1997 No 76

The *Administrative Decisions Tribunal Act 1997* is amended as set out in Schedule 2.

20

20 Amendment of Legal Profession Act 1987 No 109

The *Legal Profession Act 1987* is amended by inserting the following paragraph after section 171C (1) (f):

- (f1) in the case of a barrister who is a public notary, order that the barrister cease to accept instructions in relation to notarial services,

25

21 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

30

Clause 21 Public Notaries Bill 1997

Part 4 Miscellaneous

- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

5

Schedule 1 Savings, transitional and other provisions

(Section 18)

1 Definition

In this Schedule, *repealed Act* means the *Public Notaries Act 1985*. 5

2 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later day. 10
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or 15
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication. 20

3 Saving of appointment of certain public notaries

A person who was a public notary under the repealed Act immediately before its repeal by this Act is taken:

- (a) to be a public notary appointed under this Act, and
- (b) to have satisfied the requirements of this Act for appointment as a public notary. 25

4 Pending application for appointment as public notary

- (1) An application for appointment of a person as a public notary that is pending immediately before the repeal of the repealed Act is to be dealt with under that Act as if that Act had continued in force and had not been repealed. 30

- (2) Clause 3 applies to a person appointed as a public notary pursuant to this clause in the same way as it applies to a public notary to whom that clause applies.

5 Continuation of Roll of Notaries

The Roll of Notaries maintained under the repealed Act immediately before its repeal by this Act is taken for all purposes to be the roll of public notaries required to be established and maintained under section 7 of this Act. 5

6 References to notaries in other laws

A reference in any other Act or law or in any instrument made under an Act or law to a notary public or public notary is, in so far as it relates to the performance of notarial work in the State, to be read as a reference to a person whose name is on the roll. 10

7 References to repealed Act

A reference in any Act (other than this Act), in any instrument made under an Act or in any document to the *Public Notaries Act 1985* is to be read: 15

- (a) as a reference to this Act, unless it relates to a matter that continues to be dealt with by the repealed Act, or
(b) if it relates to such a matter—as a reference to the repealed Act. 20

8 General saving

- (1) If anything done or commenced under a provision of the repealed Act before the repeal of that provision and still having effect or not completed immediately before that repeal could have been done or commenced under this Act if this Act had been in force when the thing was done or commenced: 25
(a) the thing continues to have effect, or
(b) the thing commenced may be completed.
- (2) This clause is subject to any express provision of this Act on the matter. 30

**Schedule 2 Amendment of Administrative
Decisions Tribunal Act 1997**

(Section 19)

[1] Schedule 2 Composition and functions of Divisions

Insert at the end of clause 2 in Division 2 of Part 3 in Schedule 2: 5

Public Notaries Act 1997

[2] Schedule 2, Part 3, Division 3, clause 4A

Insert after clause 4:

4A Public Notaries Act 1997 (Original decisions)

- (1) For the purposes of the application of Part 10 of the *Legal Profession Act 1987* under section 14 of the Act, the Tribunal is to be constituted as follows: 10
- (a) in the case of a complaint against a public notary who is a barrister—by 1 judicial member, 1 barrister member and 1 lay member, 15
 - (b) in the case of a complaint against a public notary who is a solicitor—by 1 judicial member, 1 solicitor member and 1 lay member.
- (2) In this clause, *the Act* means the *Public Notaries Act 1997*. 20