

PUBLIC NOTARIES ACT, 1985, No. 6

NEW SOUTH WALES



TABLE OF PROVISIONS.

1. Short title.
 2. Commencement.
 3. Interpretation.
 4. Appointment of certain public notaries and confirmation of past actions.
 5. Appointment of public notaries.
 6. Objections.
 7. Roll of Public Notaries.
 8. Discipline.
 9. Offences.
 10. Annual fee and annual statement.
 11. References in other Acts, etc.
 12. Effect of expression "public notary".
 13. Fees chargeable by public notaries.
 14. Proceedings for offences.
 15. Rules.
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PUBLIC NOTARIES ACT, 1985, No. 6

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ



Act No. 6, 1985.

An Act to provide for the appointment, enrolment and discipline of public notaries. [Assented to, 27th March, 1985.]

Public Notaries 1985

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the "Public Notaries Act, 1985".

Commencement.

2. (1) Sections 1, 2 and 13 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Interpretation.

3. In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"appointed day" means the day appointed and notified under section 2 (2);

"Court" means the Supreme Court of New South Wales;

"Registrar" means the Registrar of Public Notaries referred to in section 7;

"Roll" means the Roll of Public Notaries maintained under section 7;

"rules" means rules of the Court.

Public Notaries 1985

Appointment of certain public notaries and confirmation of past actions.

4. (1) A person who, immediately before the appointed day, held office as, and was in practice in the State as, a notary public or public notary appointed, or purporting to have been appointed, by the Court of Faculties of His Grace the Archbishop of Canterbury shall be deemed to have been, on that day, appointed under this Act as a public notary.

(2) Any act, matter or thing appertaining to the office, function or practice of a notary public or public notary that was done or performed in the State at any time before the appointed day by a person referred to in subsection (1) has, and shall be deemed always to have had, the same force and effect as it would have had if, at that time, this Act had been in force and the name of the person had been on the Roll.

Appointment of public notaries.

5. (1) The Court may appoint a person as a public notary if, on application to the Court made and advertised as prescribed by the rules and accompanied by the fee so prescribed, the Court is satisfied that the person—

- (a) is a barrister or solicitor of not less than 5 years' standing or is a barrister or solicitor of less than 5 years' standing whose name, at all times during a continuous period of not less than 5 years, was on the Roll of Barristers when not on the Roll of Solicitors or on the Roll of Solicitors when not on the Roll of Barristers;
- (b) is of good fame and character;
- (c) is competent to act as a public notary; and
- (d) has such other qualifications as may be prescribed by the rules.

(2) An appointment under subsection (1) may be made subject to conditions imposed by the Court.

Objections.

6. A person who, as prescribed by the rules, files and serves notice in a form so prescribed objecting to an application under section 5 may, in person or by counsel, appear before the Court and be heard in opposition to the application.

Public Notaries 1985

Roll of Public Notaries.

7. (1) The officer of the Court prescribed by the rules as the Registrar of Public Notaries shall establish and maintain a Roll of Public Notaries in which shall be entered the name of, and particulars so prescribed relating to—

- (a) a person referred to in section 4 (1) whose appointment, or purported appointment, by the Court of Faculties so referred to has not been revoked and who, not later than the expiration of the period of one year that next succeeds the appointed day, makes the prescribed application for enrolment; and
- (b) each person who is appointed under this Act as a public notary otherwise than by the operation of section 4 (1).

(2) The Registrar shall, at such times as are prescribed by the rules, make available for public inspection the names and particulars entered on the Roll.

(3) The Court may, at the request of a public notary, cause the name of the public notary to be removed from the Roll.

(4) Where the name of a public notary is removed from the Roll of Barristers or the Roll of Solicitors and is not then entered in the other of those Rolls, the Registrar shall remove the name of the public notary from the Roll of Public Notaries.

Discipline.

8. (1) The Court may, on its own motion or on cause being shown on application by any person—

- (a) reprimand a public notary;
 - (b) suspend a public notary from practice in the State for a specified period; or
 - (c) cause the name of a public notary to be removed from the Roll,
- or it may, in the case of such an application, dismiss the application.

Public Notaries 1985

(2) Where the Court acts under subsection (1) (a) or (b) in relation to a public notary, it may order the public notary to comply with such conditions as it thinks fit to impose.

Offences.

9. (1) A person shall not—

(a) in the case of a person referred to in section 4 (1)—after the expiration of the period of one year that next succeeds the appointed day; or

(b) in the case of any other person—on or after the appointed day,

do or perform in the State any act, matter or thing appertaining to the office, function or practice of a public notary unless the name of the person is on the Roll.

(2) A public notary who—

(a) is a solicitor; and

(b) does not hold a practising certificate in force under the Legal Practitioners Act, 1898,

shall not do or perform in the State any act, matter or thing appertaining to the office, function or practice of a public notary.

(3) A public notary shall not—

(a) while suspended from practice under section 8 (1); or

(b) while suspended from practice as a barrister or solicitor,

do or perform in the State any act, matter or thing appertaining to the office, function or practice of a public notary.

Penalty: \$500.

Public Notaries 1985

Annual fee and annual statement.

10. (1) A person whose name is on the Roll immediately before 30th June in a year shall, during the month of July in that year or, where an extended period is allowed under subsection (2), during the extended period—

- (a) pay to the Registrar the fee prescribed by the regulations under the Supreme Court Act, 1970, for the purposes of this section; and
- (b) lodge with the Registrar a statement containing the particulars prescribed by the rules for the purposes of this section.

(2) The Registrar may, on the application of a person required to comply with subsection (1) made before the expiration of the period during which that compliance is required, extend or further extend the time for compliance by the person with that subsection.

(3) Where a public notary fails to comply with subsection (1), the Registrar shall remove the name of the public notary from the Roll.

References in other Acts, etc.

11. A reference in any other Act or in any instrument under an Act to a notary public or public notary shall, in so far as it relates to the performance of a notarial act within the State, be construed—

- (a) during the period of one year that succeeds the appointed day— as a reference to—
 - (i) a person referred to in section 4 (1); or
 - (ii) a person whose name is on the Roll; and
- (b) after the expiration of that period of one year—as a reference to a person whose name is on the Roll.

Effect of expression “public notary”.

12. For the avoidance of doubt, it is declared that—

- (a) a holder of the office of public notary has the same powers, authorities, duties and functions as a holder of the office of notary public or public notary had immediately before the appointed day; and

Public Notaries 1985

- (b) nothing in this Act affects the validity or operation within the State of a notarial act duly done outside the State.

Fees chargeable by public notaries.

13. (1) In this section—

“Board” means the Legal Fees and Costs Board constituted by Part IVA of the Legal Practitioners Act, 1898;

“determination” means a determination made by the Board under this section.

(2) The Board may make determinations relating to fees that may be charged by public notaries for the performance of notarial acts.

(3) A determination may be amended or revoked by a subsequent determination made by the Board.

(4) The Board shall review each determination in force at least once in the period of 12 months after it was made and in each period of 12 months thereafter.

(5) A provision of a determination may—

- (a) apply differently according to different factors of a specified kind; or
- (b) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

(6) The following provisions of the Legal Practitioners Act, 1898, namely—

- (a) section 20M (inquiries by Board);
- (b) section 20N (application of quantum and principles determined in State Wage Cases);
- (c) section 20o (report of Board’s determinations and reasons therefor); and
- (d) section 20P (publication, commencement and tabling of Board’s determinations),

Public Notaries 1985

apply to and in respect of determinations under this section in the same way as they apply to and in respect of determinations under Part IVA of that Act.

(7) The Board shall, as soon as practicable after the commencement of this section, make a determination under subsection (2).

(8) A determination made before the appointed day has no effect before the appointed day.

Proceedings for offences.

14. Proceedings for an offence against this Act shall be disposed of summarily before a court of petty sessions constituted by a stipendiary magistrate sitting alone.

Rules.

15. (1) The powers conferred by section 123 of the Supreme Court Act, 1970, include power to make rules for the purposes of this Act and, in particular, for or with respect to—

- (a) prescribing qualifications (including the completion of a specified course or the passing of a specified examination) for appointment as a public notary;
- (b) prescribing the particulars to be entered in the Roll; or
- (c) regulating the professional practice, conduct and discipline of a public notary.

(2) While no determination is in force under section 13 of this Act, the powers conferred by section 123 of the Supreme Court Act, 1970, include power to make rules for or with respect to the fees that may be charged by public notaries for the performance of notarial acts.