

[Act 1997 No 98]



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.

* Amended in committee—see table at end of volume.

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.

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Schedules

Schedule 1 contains provisions of a savings and transitional nature.

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