

Public Notaries Act 1997 No 98

[1997-98]



New South Wales

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Public Notaries Act 1997 No 98



New South Wales

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.

Part 1 Preliminary

1 Name of Act

This Act is the *Public Notaries Act 1997*.

2 Commencement

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

3 Definitions

In this Act:

Admission Board means the NSW Legal Profession Admission Board constituted under Division 1 of Part 3 of the *Legal Profession Uniform Law Application Act 2014*.

barrister has the same meaning as in the *Legal Profession Uniform Law (NSW)*.

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 means an Australian legal practitioner within the meaning of the *Legal Profession Uniform Law (NSW)*.

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.

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

solicitor has the same meaning as in the [Legal Profession Uniform Law \(NSW\)](#).

3A Notes

Notes included in this Act are explanatory notes and do not form part of this Act.

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 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.

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.
- (3) The Court may order that the name of a person be removed from the roll for misconduct as a public notary, incompetence as a public notary or for any other reason the Court considers warrants removal.
- (4) Misconduct as a public notary includes conduct that, had it been done as an Australian legal practitioner, would be or be capable of being unsatisfactory professional conduct or professional misconduct under Chapter 4 of the [Legal Profession Act 2004](#).

7 Roll of public notaries

- (1) An officer of the Admission Board designated by the Admission Board as the registrar of public notaries is to establish and maintain a roll of public notaries.
- (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

(c) any other particulars relating to the person prescribed by the rules.

(3) The registrar may remove the name of a public notary from the roll at the request of the public notary.

(4) If a person ceases to be a legal practitioner, the registrar is to remove the name of the public notary from the roll of public notaries.

(5) The registrar must remove the name of a public notary from the roll in accordance with:

(a) an order of the Court under this Act, or

(b) an order of the Civil and Administrative Tribunal under the *Legal Profession Uniform Law (NSW)*.

(6) In this section, **rules** means rules of the Court.

8 Publication of information on roll of public notaries

The Admission Board may, in circumstances that it considers appropriate, publish:

(a) the name of any person on the roll, and

(b) the name of the person's firm (if any), and

(c) the address at which the person or the person's firm practises.

9 Rules for 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,

(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,

(d) applications for appointment as a public notary and the approval of such applications,

(e) the keeping of records concerning 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.

9A Provisions applying to admission rules

- (1) A rule made under section 9 must be published in the Gazette.
- (2) Sections 40 (Notice of statutory rules to be tabled) and 41 (Disallowance of statutory rules) of the *Interpretation Act 1987* apply to a rule made under section 9 in the same way as they apply to a statutory rule.

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.
- (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.
- (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.
- (2) Subsection (1) does not apply with respect to a public notary who is employed by a law practice within the meaning of the *Legal Profession Act 2004* 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 body corporate, and **corporation** and **related body corporate** have the same meanings as in the *Corporations Act 2001* of the Commonwealth.

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.

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.

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.

Maximum penalty: 10 penalty units.

14 Application of [Legal Profession Uniform Law \(NSW\)](#) regarding dispute resolution and professional discipline

- (1) Chapters 5 and 7 of the [Legal Profession Uniform Law \(NSW\)](#) apply to public notaries in the same way as they apply to Australian lawyers, subject to any modifications prescribed by the regulations.
- (2) Without limitation, the power of NCAT to make orders under section 302 of the [Legal Profession Uniform Law \(NSW\)](#) includes the power to make an order that the name of a person be removed from the roll.

Part 4 Miscellaneous

15 Proceedings for offences

Proceedings for an offence against this Act or the regulations are to be taken before the Local Court.

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.

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.

19, 20 (Repealed)

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.

- (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.

Schedule 1 Savings, transitional and other provisions

(Section 18)

1 Definition

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

2 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of:
 - this Act
 - Legal Profession Amendment Act 2005*
 - any other Act that amends this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (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
 - (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.

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.

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.

- (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.

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.

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:

- (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.

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:

- (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.

9 Provisions consequent on enactment of *Legal Profession Amendment Act 2005*—new complaints about old conduct

- (1) This clause applies to conduct that occurred or is alleged to have occurred before the commencement of this clause and that could have been the subject of a complaint under Part 10 of the *Legal Profession Act 1987* as applied by section 14 of this Act.
- (2) A complaint about the conduct may be made, and dealt with, under this Act and the *Legal Profession Act 2004*, even if the conduct could not be the subject of a complaint

if it had occurred after the commencement of this clause.

- (3) Chapter 4 of the *Legal Profession Act 2004*, and any other relevant provisions of that Act, apply to and in respect of such a complaint and any proceedings relating to it, and so apply with any necessary adaptations.
- (4) However, the Legal Services Commissioner, the Bar Council, the Law Society Council or the Administrative Decisions Tribunal may not make any determination or order of a disciplinary nature against the person in respect of whom the complaint was made that is more onerous than that which could have been made under the *Legal Profession Act 1987*.

Schedule 2 (Repealed)