



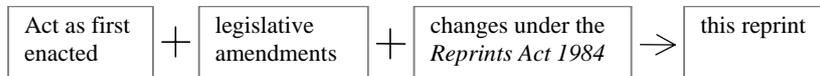
Western Australia

Public Notaries Act 1979

Reprint 2: The Act as at 8 May 2009

Guide for using this reprint

What the reprint includes



Endnotes, Compilation table, and Table of provisions that have not come into operation

1. Details about the original Act and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Validation, transitional, savings, or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the Act being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

Notes amongst text (italicised and within square brackets)

1. If the reprint includes a section that was inserted, or has been amended, since the Act being reprinted was passed, editorial notes at the foot of the section give some history of how the section came to be as it is. If the section replaced an earlier section, no history of the earlier section is given (the full history of the Act is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
 - removed (because it was repealed or deleted from the law); or
 - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

Reprint numbering and date

1. The reprint number (in the footer of each page of the document) shows how many times the Act has been reprinted. For example, numbering a reprint as “Reprint 3” would mean that the reprint was the 3rd reprint since the Act was passed. Reprint numbering was implemented as from 1 January 2003.
2. The information in the reprint is current on the date shown as the date as at which the Act is reprinted. That date is not the date when the reprint was published by the State Law Publisher and it is probably not the date when the most recent amendment had effect.

Western Australia

Public Notaries Act 1979

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Western Australia

Reprinted under the
Reprints Act 1984 as
at 8 May 2009

Public Notaries Act 1979

An Act to make provision in respect of Public Notaries, and for related purposes.

1. Short title

This Act may be cited as the *Public Notaries Act 1979*¹.

2. Commencement

This Act shall come into operation on a date to be fixed by proclamation¹.

3. Terms used

In this Act, unless the context otherwise requires —

applicant means an applicant for appointment as a Public Notary;

Australian lawyer has the meaning given in the *Legal Profession Act 2008* section 3;

commencement date means the date on which this Act comes into operation;

Chief Justice means the Chief Justice of Western Australia;

Court means the Supreme Court;

district means a district prescribed by rules made under section 17;

District Public Notary means a person appointed as such under and subject to this Act;

enrolled in relation to a Public Notary means a Public Notary whose name appears on the Roll of Notaries;

established Public Notary means a person who was, immediately before the commencement date, an enrolled Public Notary;

General Public Notary means a person appointed as such under and subject to this Act;

Public Notary means a General Public Notary or a District Public Notary, as the case requires;

repealed Act means the Act repealed by section 4;

Roll of Notaries means the roll preserved and continued under section 5;

section means a section of this Act;

subsection means a subsection of the section wherein the term is used;

Supreme Court (full bench) means the Supreme Court constituted by at least 3 judges.

[Section 3 amended by No. 45 of 2004 s. 37; No. 59 of 2004 s. 141; No. 21 of 2008 s. 694(2).]

4. Repeal

The *Public Notaries Act 1902* is hereby repealed.

5. Confirmation of established Public Notaries, and preservation and continuation of the Roll of Notaries

- (1) Every established Public Notary is deemed to have been duly appointed and enrolled as a General Public Notary under and subject to this Act, and acts done within the State before the commencement date by an established Public Notary under the

authority of the repealed Act shall have the same force as if they were done under the authority of this Act.

- (2) The roll referred to in section 10 of the repealed Act is preserved and shall be continued as the Roll of Notaries under and subject to this Act.

6. Appointment of Public Notaries

- (1) Except as provided by this Act a person shall not be appointed a Public Notary.
- (2) Appointments as Public Notaries may be made only by order of the Supreme Court (full bench).
- (3) Subject to this Act, a person may be appointed a General Public Notary or a District Public Notary.
- (4) Appointments as Public Notaries of practitioners of the Court practising in the Fremantle or Perth district shall be as General Public Notaries.

[Section 6 amended by No. 45 of 2004 s. 37.]

7. Applications and qualifications

- (1) A person who seeks to be appointed a Public Notary shall apply in the prescribed manner to the Chief Justice and shall specify whether he seeks to be appointed a General Public Notary or a District Public Notary, and in the latter case shall specify the district for which he seeks to be appointed.
- (2) To be qualified to be appointed a Public Notary the applicant shall satisfy the Chief Justice that —
 - (a) the applicant is an Australian lawyer and is not under suspension from legal practice;
 - (b) he is —
 - (i) a practitioner of the Court of 3 years standing and practice; or

- (ii) a practitioner of the Court of less than 3 years standing and practice who has practised for 7 years as a Public Notary elsewhere;
- (c) he is of good character and reputation;
- (d) he is competent to act as a General Public Notary or a District Public Notary, as the case may be; and
- (e) there is a need for the appointment of a Public Notary in the district where the applicant is practising.

[Section 7 amended by No. 65 of 2003 s. 57(2); No. 21 of 2008 s. 694(3).]

8. Certificate of Chief Justice

On being satisfied that an applicant is qualified to be a General Public Notary or a District Public Notary, as the case may be, the Chief Justice may grant to the applicant a certificate to that effect in the prescribed form and where he certifies that an applicant is qualified to be a District Public Notary, the Chief Justice shall specify in the certificate the district to which the certificate relates.

9. Intention to apply to Supreme Court (full bench) to be advertised

On grant of a certificate pursuant to section 8, the applicant shall, in the prescribed manner advertise his intention to apply to the Supreme Court (full bench), on a day not earlier than 4 weeks from the first advertisement, for appointment as a General Public Notary or a District Public Notary, as the case may be.

[Section 9 amended by No. 45 of 2004 s. 37.]

10. Standing of Attorney General

- (1) The Attorney General may at the request of the Chief Justice report on any question in proceedings before the Chief Justice by way of an application under section 7.

- (2) The Attorney General may intervene in, and contest or argue any question in proceedings before the Chief Justice by way of an application under section 7 or proceedings before the Supreme Court (full bench) by way of an application under section 9 and shall be afforded full opportunity to do so.
- (3) Where the Attorney General intervenes in proceedings as mentioned in subsection (2), he shall be deemed to be a party to the proceedings with all the rights, duties, and liabilities of such a party.
- (4) In relation to the qualifications of applicants, the Attorney General may consult any body of Notaries established, or available, in the State for that purpose.

[Section 10 amended by No. 45 of 2004 s. 37.]

11. Objection to appointment

Any person desiring to object to the appointment of any applicant may be heard before the Supreme Court (full bench) by himself or counsel, with or without witnesses, to oppose such appointment, but written notice, stating the grounds of such objection, shall be lodged in the Court 7 days at least before the day on which the application for appointment is made.

[Section 11 amended by No. 45 of 2004 s. 37.]

12. Orders of the Supreme Court (full bench) appointing Public Notaries

Subject to this Act, an order of the Supreme Court (full bench) appointing a Public Notary shall specify whether the appointment is as a General Public Notary or a District Public Notary, and in the latter case shall specify the district for which the appointment is made.

[Section 12 amended by No. 45 of 2004 s. 37.]

13. Oath to be taken by persons appointed

Before his name is entered on the Roll of Notaries every person appointed a Public Notary shall make oath before the master of the Court or a person prescribed for the purpose by rules made under section 17, to the effect following —

“I, _____, do swear that I will not make or attest any act, contract, or instrument in which I shall know there is violence or fraud; and in all things I will act uprightly and justly in the business of a Public Notary, according to the best of my skill and ability: So help me, God.”

[Section 13 amended by No. 24 of 2005 s. 63.]

14. On appointment Public Notaries to sign roll and receive certificate

- (1) The Roll of Notaries shall be kept by the registrar of the Court containing the names of General Public Notaries and District Public Notaries, and, in the latter case, the districts for which they are appointed.
- (2) Every person appointed a Public Notary shall, after making the oath as provided in section 13, be entitled to be enrolled.
- (3) The registrar, on the application of any enrolled person shall, from time to time, issue him a certificate in the prescribed form, which shall indicate whether the person is a General Public Notary or a District Public Notary and, in the latter case, shall specify the district for which he is appointed, and the registrar shall affix the seal of the Court to the certificate.
- (4) The Roll of Notaries shall, during office hours, be open to the inspection of any person without fee or reward, and a certificate under the hand of the registrar as to any matter appearing in or by the Roll of Notaries shall be conclusive evidence thereof.

15. Powers and authorities of enrolled Public Notaries

- (1) An enrolled General Public Notary may exercise all such powers and authorities throughout the State as may be lawfully exercised by Public Notaries in the United Kingdom or in Western Australia.
- (2) An enrolled District Public Notary may exercise all those powers and authorities in the district for which he is appointed.

15A. Fees to be charged by Public Notaries

A Public Notary may charge a fee for providing notarial services but that fee shall not exceed the fee for those services fixed from time to time by costs determination (as defined in the *Legal Profession Act 2008* section 252).

[Section 15A inserted by No. 46 of 1997 s. 4; amended by No. 65 of 2003 s. 57(3); No. 21 of 2008 s. 694(4).]

16. Supreme Court (full bench) may suspend and strike off Public Notaries

- (1) The Supreme Court (full bench), on the application of any person, may, on such terms and conditions as may seem fit —
 - (a) suspend any Public Notary from practice, and call in and detain his certificate; or
 - (b) strike the name of any Public Notary off the roll, and cancel his certificate.
- (2) Where a practitioner of the Court, being a Public Notary, is suspended from practice or struck off the roll under the *Legal Profession Act 2008*, he shall, without further order, be suspended from practice as a Public Notary for a similar term, or be struck off the Roll of Notaries, as the case may be.

[Section 16 amended by No. 65 of 2003 s. 57(4); No. 45 of 2004 s. 37; No. 21 of 2008 s. 694(5).]

17. Judges may make rules

The judges of the Court may from time to time make rules —

- (a) for ascertaining the qualification, character, and competency of persons applying to be appointed Public Notaries under this Act;
- (b) for regulating the investigation of charges of misconduct of Public Notaries in the practice of their profession, and for imposing conditions to be observed by applicants for re-appointment;
- (c) prescribing the duties of Public Notaries; and
- (d) generally for carrying this Act into effect.

[Section 17 amended by No. 46 of 1997 s. 5.]

18. Fees on appointment payable to Supreme Court

- (1) Public Notaries on appointment as such shall pay to the master of the Supreme Court such fees as are prescribed.
- (2) Fees paid under subsection (1) shall be used for the purposes of the Court library.

19. Penalty on unauthorised persons practising as Public Notaries

A person shall not in any district do, execute, or perform any act, matter, or thing appertaining to the office, function, and practice of a Public Notary for or in expectation of any gain, fee, or reward or hold himself out as a Public Notary unless —

- (a) he is an enrolled General Public Notary; or
- (b) he is an enrolled District Public Notary for that district,

and he is not under suspension from practice as such.

Penalty: \$500.



Notes

¹ This reprint is a compilation as at 8 May 2009 of the *Public Notaries Act 1979* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Public Notaries Act 1979</i>	70 of 1979	27 Nov 1979	1 Aug 1980 (see s. 2 and <i>Gazette</i> 1 Aug 1980 p. 2537)
<i>Public Notaries Amendment Act 1997</i>	46 of 1997	10 Dec 1997	s. 1 and 2: 10 Dec 1997; Act other than s. 1 and 2: 8 Jan 2000 (see s. 2 and <i>Gazette</i> 7 Jan 2000 p. 19)
Reprint 1: The <i>Public Notaries Act 1979</i> as at 5 Sep 2003 (includes amendments listed above)			
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003</i> s. 57	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>Acts Amendment (Court of Appeal) Act 2004</i> s. 37	45 of 2004	9 Nov 2004	1 Feb 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005</i> s. 63	24 of 2005	2 Dec 2005	1 Jan 2006 (see s. 2(1) and <i>Gazette</i> 23 Dec 2005 p. 6244)
<i>Legal Profession Act 2008</i> s. 694	21 of 2008	27 May 2008	1 Mar 2009 (see s. 2(b) and <i>Gazette</i> 27 Feb 2009 p. 511)
Reprint 2: The <i>Public Notaries Act 1979</i> as at 8 May 2009 (includes amendments listed above)			

Defined Terms

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined Term	Provision(s)
applicant	3
Australian lawyer	3
Chief Justice	3
commencement date	3
Court	3
district	3
District Public Notary	3
enrolled	3
established Public Notary	3
General Public Notary	3
Public Notary	3
repealed Act	3
Roll of Notaries	3
section	3
subsection	3
Supreme Court (full bench)	3