

Western Australia

## **Public Notaries Act 1979**

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### **THE TEXT OF THE LEGISLATION FOLLOWS**



## Public Notaries Act 1979

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## **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*<sup>1</sup>.

**2. Commencement**

This Act shall come into operation on a date to be fixed by proclamation<sup>1</sup>.

**3. Interpretation**

In this Act, unless the context otherwise requires —

“**applicant**” means an applicant for appointment as a Public Notary;

“**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;

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**“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**“repealed Act”** means the Act repealed by section 4;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.]*

**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The *Public Notaries Act 1902* is hereby repealed.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and acts done within the State before the commencement date by an established Public Notary under the authority of the repealed Act shall have the same force as if they were done under the authority of this Act.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 on the Roll of Practitioners under the *Legal Practice Act 2003* and is not pursuant to that Act under suspension from 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;

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- (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).]*

**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 some Commissioner duly appointed to take affidavits therein, to the effect following —

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“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.”

**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 legal costs determination (as defined in the *Legal Practice Act 2003*).

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

**16. Court 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 Practice Act 2003*, 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.]*

**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

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(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**

<sup>1</sup> This is a compilation of the *Public Notaries Act 1979* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<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	8 Jan 2000 (see s. 2 and <i>Gazette</i> 7 Jan 2000 p. 19)
<b>Reprint 1: The <i>Public Notaries Act 1979</i> as at 5 Sep 2003</b> (includes amendments listed above)			
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 s. 57</i>	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 s. 37</i>	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 s. 141</i>	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

**Provisions that have not come into operation**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005 s. 63</i> <sup>2</sup>	24 of 2005	2 Dec 2005	To be proclaimed (see s. 2)

<sup>2</sup> On the date as at which this compilation was prepared, the *Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005 s. 63*, which gives effect to Sch. 1, had not come into operation. It reads as follows:

“

**63. Various Acts amended**

Each Act listed in Schedule 1 is amended as set out in that Schedule below the short title of the Act.

Schedule 1 it. 13 reads as follows:

**Schedule 1 — Amendments to various Acts**

[s. 63]

**13. Public Notaries Act 1979**

s. 13	Delete “some Commissioner duly appointed to take affidavits therein” and insert instead — “ a person prescribed for the purpose by rules made under section 17 ”.
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