

Version No. 010
Public Notaries Act 2001
No. 52 of 2001

Version incorporating amendments as at 15 May 2008

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Public Notaries Act 2001
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The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purpose

The purpose of this Act is to provide for the appointment and enrolment of public notaries by the Supreme Court.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day to be proclaimed.
- (2) If this Act does not come into operation before 31 July 2002, it comes into operation on that day.

3 Definitions

In this Act—

Australian lawyer has the same meaning as in the **Legal Profession Act 2004**;

S. 3 def. of *Australian lawyer* inserted by No. 18/2005 s. 18(Sch. 1 item 89.1(a)).

Australian practising certificate has the same meaning as in the **Legal Profession Act 2004**;

S. 3 def. of *Australian practising certificate* inserted by No. 18/2005 s. 18(Sch. 1 item 89.1(a)).

s. 3

S. 3 def. of
*Board of
Examiners*
substituted by
No. 18/2005
s. 18(Sch. 1
item 89.1(b)).

Board of Examiners has the same meaning as in
the **Legal Profession Act 2004**;

S. 3 def. of
*Council of
Legal
Education*
substituted by
No. 18/2005
s. 18(Sch. 1
item 89.1(c)).

Chief Justice has the same meaning as in the
Supreme Court Act 1986;

Council of Legal Education has the same
meaning as in the **Legal Profession Act
2004**;

S. 3 def. of
*Legal Practice
Board*
repealed by
No. 18/2005
s. 18(Sch. 1
item 89.1(d)).

* * * * *

S. 3 def. of
*Legal
Services
Board*
inserted by
No. 18/2005
s. 18(Sch. 1
item 89.1(a)).

Legal Services Board has the same meaning as in
the **Legal Profession Act 2004**;

S. 3 def. of
*practising
certificate*
repealed by
No. 18/2005
s. 18(Sch. 1
item 89.1(d)).

* * * * *

Prothonotary means Prothonotary of the Supreme
Court;

public notary means a person enrolled in
accordance with section 8 as a public notary;

roll means roll of public notaries kept in
accordance with section 8.

PART 2—APPOINTMENT OF PUBLIC NOTARIES

4 Eligibility for appointment

A person cannot be appointed as a public notary unless the person—

- (a) is a natural person; and
- (b) is an Australian lawyer; and

S. 4(b)
substituted by
No. 18/2005
s. 18(Sch. 1
item 89.2(a)).

- (c) subject to section 5(7), has held for a period of 5 years an Australian practising certificate authorising the person to engage in legal practice as a principal; and
- (d) has completed, to the satisfaction of the Board of Examiners, a course of study related to notarial practice approved by the Council of Legal Education.

S. 4(c)
amended by
No. 18/2005
s. 18(Sch. 1
item 89.2(b)).

5 Application for certificate of eligibility

- (1) A person who intends to apply for appointment as a public notary must apply to the Board of Examiners for a certificate that the applicant is eligible for appointment in accordance with section 4.
- (2) An application under subsection (1) must be in the form prescribed by the rules of the Supreme Court.
- (3) An applicant must pay to the Prothonotary a fee of 29 fee units or, if a fee is prescribed by the regulations, the prescribed fee.
- (4) An application must be accompanied by evidence of the matters set out in paragraphs (b), (c) and (d) of section 4.

S. 5(3)
amended by
Nos 10/2004
s. 15(Sch. 1
item 24),
14/2006 s. 18.

-
- (5) The Board of Examiners may require an applicant—
- (a) to provide any further evidence that the Board thinks fit in relation to any matter relevant to the Board's consideration; or
 - (b) to appear in person before the Board.
- (6) The Board of Examiners may make any enquiries it thinks fit concerning an application under this section.
- (7) The Board of Examiners may, subject to any conditions it thinks fit, dispense with or vary, in an individual case, the requirement that an applicant have held for a period of 5 years an Australian practising certificate authorising the person to engage in legal practice as a principal to the extent that the Board considers that the dispensation or variation—
- (a) does not; or
 - (b) if the applicant complies with the conditions imposed by the Board, will not—
- materially diminish the value of that requirement.
- (8) If it appears to the Board of Examiners that the applicant is eligible for appointment as a public notary, the Board must issue to the applicant a certificate in the form prescribed by the rules of the Supreme Court.

S. 5(7)
amended by
No. 18/2005
s. 18(Sch. 1
item 89.3).

6 Application for appointment as a public notary

- (1) A person to whom a certificate has been issued under section 5 may apply, within 30 days after the date of issue of the certificate, to the Supreme Court constituted by the Chief Justice for appointment as a public notary.
 - (2) An application must be made in accordance with the rules of the Supreme Court.
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- (3) The Supreme Court constituted by the Chief Justice may appoint and enrol a person as a public notary if the person—
- (a) files with the Court the certificate issued under section 5; and
 - (b) pays the fee, if any, prescribed by the regulations.

7 Appeal from Board of Examiners

- (1) A person may appeal to the Supreme Court constituted by the Chief Justice against a decision of the Board of Examiners with respect to his or her application for a certificate under section 5.
- (2) An appeal under subsection (1) must be made within 30 days after the person is notified of the decision.
- (3) An appeal under subsection (1) is to be conducted as a re-hearing.

8 Roll of public notaries

- (1) The Supreme Court must cause to be kept a roll of the names of persons appointed as public notaries in Victoria.
- (2) The roll must include the date of birth and date of appointment as public notary of each person listed on the roll.
- (3) A person appointed as a public notary must sign the roll kept by the Supreme Court.
- (4) The appointment of a person as a public notary is effective from the time the person signs the roll.
- (5) The Supreme Court may, at the request of a public notary, cause the name of the public notary to be removed from the roll.

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s. 8

(6) If a public notary ceases to be an Australian lawyer the Supreme Court must cause the name of the public notary to be removed from the roll.

S. 8(6)
amended by
No. 18/2005
s. 18(Sch. 1
item 89.4(a)).

(7) The Prothonotary must forward to the Legal Services Board the name, date of birth and date of appointment of each public notary as soon as practicable after the person has signed the roll.

S. 8(7)
amended by
No. 18/2005
s. 18(Sch. 1
item 89.4(b)).

PART 3—GENERAL

9 Offences

- (1) Subject to subsection (2), a person, other than a person who—
- (a) is named on the roll; and
 - (b) holds an Australian practising certificate that authorises the person to engage in legal practice as a principal—

S. 9(1)(b)
amended by
No. 18/2005
s. 18(Sch. 1
item 89.5).

must not—

- (c) hold out that the person is entitled, qualified, able or willing to practise as a public notary; or
- (d) practise as a public notary.

Penalty: 120 penalty units.

- (2) Subsection (1) does not apply to a person who is deemed by section 12(1) to be a public notary appointed under this Act.

10 Effect of expression "public notary"

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

11 Regulations

The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

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Part 4—Savings, Consequential and Transitional Provisions

s. 12

**PART 4—SAVINGS, CONSEQUENTIAL AND
TRANSITIONAL PROVISIONS**

Ss 12–14
repealed by
No. 28/2007
s. 3(Sch.
item 56).

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ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 17 May 2001

Legislative Council: 18 September 2001

The long title for the Bill for this Act was "A Bill to provide for the appointment and regulation of the practice of public notaries, to amend the **Legal Practice Act 1996**, the **Instruments Act 1958** and the **Evidence Act 1958** and for other purposes."

The **Public Notaries Act 2001** was assented to on 25 September 2001 and came into operation on 6 June 2002: Government Gazette 30 May 2002 page 1118.

2. Table of Amendments

This Version incorporates amendments made to the **Public Notaries Act 2001** by Acts and subordinate instruments.

Monetary Units Act 2004, No. 10/2004

Assent Date: 11.5.04
Commencement Date: S. 15(Sch. 1 item 24) on 1.7.04: s. 2(2)
Current State: This information relates only to the provision/s amending the **Public Notaries Act 2001**

Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date: 24.5.05
Commencement Date: S. 18(Sch. 1 item 89) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s amending the **Public Notaries Act 2001**

Justice Legislation (Miscellaneous Amendments) Act 2006, No. 14/2006

Assent Date: 11.4.06
Commencement Date: S. 18 on 12.4.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Public Notaries Act 2001**

Statute Law Revision Act 2007, No. 28/2007

Assent Date: 26.6.07
Commencement Date: S. 3(Sch. item 56) on 27.6.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Public Notaries Act 2001**

3. Explanatory Details

No entries at date of publication.

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