

Public Notaries Act 2001

Act No. 52/2001

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Victoria

No. 52 of 2001

Public Notaries Act 2001[†]

[Assented to 25 September 2001]

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 sub-section (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—

"Board of Examiners" means Board of Examiners for Legal Practitioners constituted under the **Legal Practice Act 1996**;

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

"Council of Legal Education" means Council of Legal Education constituted under the **Legal Practice Act 1996**;

"Legal Practice Board" means Legal Practice Board constituted under the **Legal Practice Act 1996**;

"practising certificate" has the same meaning as in the **Legal Practice Act 1996**;

"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 admitted to legal practice in Victoria; and
- (c) subject to section 5(7), has held for a period of 5 years a 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.

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 sub-section (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 \$285 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.

- (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 a 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.

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 sub-section (1) must be made within 30 days after the person is notified of the decision.
- (3) An appeal under sub-section (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.
 - (6) If a public notary ceases to be a person admitted to legal practice in Victoria, the Supreme Court
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must cause the name of the public notary to be removed from the roll.

- (7) The Prothonotary must forward to the Legal Practice 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.
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PART 3—GENERAL

9. Offences

- (1) Subject to sub-section (2), a person, other than a person who—
- (a) is named on the roll; and
 - (b) holds a practising certificate in force under the **Legal Practice Act 1996** that authorises the person to engage in legal practice as a principal—

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) Sub-section (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.

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

**12. *Appointment of certain public notaries and
confirmation of past actions***

- (1) A person who, immediately before the commencement of this Act, held office as, and was in practice in Victoria as, a notary public or public notary appointed, or purporting to have been appointed, by the Court of Faculties of His Grace the Archbishop of Canterbury is deemed, for a period of 6 months after the commencement of this Act or until signing the roll in accordance with sub-section (2)—
- (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.
- (2) A person to whom sub-section (1) applies may sign the roll within 6 months after the commencement of this Act without complying with sections 5 and 6.
- (3) Any act, matter or thing relating to the office, function or practice of a notary public or public notary that was done or performed in Victoria at any time before the commencement of this Act by a person referred to in sub-section (1) has, and is deemed always to have had, the same force and effect as it would have had if, at that time, this Act had been in force and the name of the person had been on the roll.

13. Consequential amendments

- (1) The **Legal Practice Act 1996** is amended as follows—
- (a) in section 3(1), after the definition of "professional indemnity insurance" **insert—**
' "**public notary**" means a person appointed as a public notary under the **Public Notaries Act 2001**;';
 - (b) in section 9(1), for "and registered foreign practitioners" **substitute** ", registered foreign practitioners and public notaries";
 - (c) in section 9(3), after paragraph (a) **insert—**
"(ab) if the practitioner is a public notary, the date of appointment as a public notary; and";
 - (d) in section 337(1), after "with respect to" **insert—**
"
(a)";
 - (e) in section 337(1), after "legal practice" **insert—**
"; or
(b) approving the courses of study required for appointment as a public notary".
- (2) The **Evidence Act 1958** is amended as follows—
- (a) in section 107A(1), for paragraph (b) **substitute—**
"(b) a public notary;";
 - (b) in section 123C(1), for paragraph (f) **substitute—**
"(f) a public notary;";
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(c) in section 127(3), for "notary public"
substitute "public notary".

(3) In section 111(1)(b) of the **Instruments Act 1958**,
for "notary public" **substitute** "public notary".

14. Statute law revision

In section 107(2)(c)(ii) of the **Legal Practice Act 1996**, for "articles of association" **substitute** "constitution".

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ENDNOTES

† *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 "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."

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