

PUBLIC NOTARIES.

No. 70 of 1979.

AN ACT to make provision in respect of Public Notaries, and for related purposes.

[Assented to 27th November, 1979.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Public Notaries Act, 1979*. Short title
2. This Act shall come into operation on a date to be fixed by proclamation. Commencement.

Interpreta-
tion.

3. 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 current magisterial district under the Magisterial Districts Act, 1886;

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“repealed Act” means the Act repealed by section 4;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

Repeal.

4. The Public Notaries Act, 1902 is hereby repealed.

5. (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and acts done within the State before the commencement date by an established Public Notary under the authority of the repealed Act shall have the same force as if they were done under the authority of this Act.

Confirmation of established notaries, and preservation and continuation of the Roll of Notaries.

(2) The roll referred to in section 10 of the repealed Act is preserved and shall be continued as the Roll of Notaries under and subject to this Act.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. (1) Except as provided by this Act a person shall not be appointed a Public Notary.

Appointment of Public Notaries.

(2) Appointments as Public Notaries may be made only by order of the Full Court.

(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,

7. (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.

Applications and qualifications.

(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 Practitioners Act, 1893 and is not pursuant to that Act under suspension from practice;

(b) he is—

- (i) a practitioner of the Court of three years standing and practice; or
 - (ii) a practitioner of the Court of less than three years standing and practice who has practised for seven 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.

Certificate
of Chief
Justice.

8. 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.

Intention
to apply to
Full
Court to be
advertised.

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

Standing of
Attorney
General.

10. (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 Full Court 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.

11. Any person desiring to object to the appointment of any applicant may be heard before the Court 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 seven days at least before the day on which the application for appointment is made.

Objection to
appointment.

12. Subject to this Act, an order of the Full Court 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.

Orders of
the Full
Court
appointing
Public
Notaries.

13. 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—

Oath to be
taken by
persons
appointed.

“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.”

On appointment Public Notaries to sign roll and receive certificate.

14. (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.

Powers and authorities of enrolled Public Notaries.

15. (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.

Court may suspend and strike off Public Notaries.

16. (1) The Full Court, 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 Practitioners Act, 1893, 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.

17. The Judges of the Court may from time to time make rules— Judges may 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 and the fees to be charged by Public Notaries; and
- (d) generally for carrying this Act into effect.

18. (1) Public Notaries on appointment as such shall pay to the Master of the Supreme Court such fees as are prescribed. Fees on appointment payable to Supreme Court.

(2) Fees paid under subsection (1) shall be used for the purposes of the Court library.

19. 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— Penalty on unauthorised persons practising as Public Notaries.

- (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.