



Australian Capital Territory

# **Notaries Public Act 1984**

**A1984-33**

**Republication No 5**

**Effective: 24 November 2005 – 21 December 2005**

Republication date: 24 November 2005

Last amendment made by A2005-54

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Notaries Public Act 1984* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 24 November 2005. It also includes any amendment, repeal or expiry affecting the republished law to 24 November 2005.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Notaries Public Act 1984

## Contents

	Page
1 Name of Act	2
2 Interpretation for Act	2
3 Notes	2
3A Offences against Act—application of Criminal Code etc	3
4 General qualification for appointment as notary public	3
5 Application for appointment as notary public	3
6 Objection to appointment of notary public	4
7 Appointment of notary public	4
8 Roll of notaries public	5
9 Oath or affirmation by notary public	5
10 Certificate of appointment	5
11 Evidence	6
12 Exercise of functions by notaries	6
13 Removal from roll	6
14 Pretending to be notary public	8

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24/11/05

Notaries Public Act 1984  
Effective: 24/11/05-21/12/05

contents 1

## Contents

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	Page
15 Service of documents	8
16 Jurisdiction of Supreme Court	9
 <b>Schedule 1</b>	 10
 <b>Schedule 2 Certificate of appointment of notary public</b>	 11
 <b>Endnotes</b>	
1 About the endnotes	12
2 Abbreviation key	12
3 Legislation history	13
4 Amendment history	14
5 Earlier republications	15



Australian Capital Territory

# Notaries Public Act 1984

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An Act relating to notaries public

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**1 Name of Act**

This Act is the *Notaries Public Act 1984*.

**2 Interpretation for Act**

(1) In this Act:

*Note* A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

***Legal Practitioners Act*** means the *Legal Practitioners Act 1970*.

***registrar*** means the registrar of the Supreme Court.

***roll*** means the roll of notaries public for the Australian Capital Territory kept under section 8.

(2) If an expression that is defined in the Legal Practitioners Act is used in this Act, the expression has the same meaning for the purposes of this Act as it has in the Legal Practitioners Act.

**3 Notes**

A note included in this Act is explanatory and is not part of this Act.

*Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

**3A Offences against Act—application of Criminal Code etc**

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

**4 General qualification for appointment as notary public**

- (1) A person is eligible for appointment as a notary public if—
  - (a) he or she holds a current unrestricted practising certificate; and
  - (b) he or she is competent to act as a notary public; and
  - (c) he or she is of good fame and character.
- (2) A person who, because of an order under the Legal Practitioners Act, section 30 is deemed to be a person who holds an unrestricted practising certificate shall not, for subsection (1), be taken to hold a current unrestricted practising certificate.

**5 Application for appointment as notary public**

- (1) An application by a person referred to in section 4 for appointment as a notary public shall be made to the Supreme Court.
- (2) An application under this section—
  - (a) shall set out fully and clearly the facts relied on to establish that the applicant is eligible to be appointed as a notary public; and
  - (b) shall be verified by the affidavit of the applicant.

- (3) An application under this section shall not be set down for hearing on a date that is earlier than 1 month after the date the application is filed.
- (4) An applicant shall, within 2 business days after filing an application under this section, serve a copy of the application, together with a copy of the affidavit verifying the application, on the Attorney-General and on the law society.
- (5) An applicant shall publish a notice of the making of an application under this section in a newspaper circulating daily in the ACT not later than 7 days after the date the application was filed.
- (6) In this section:  
*business day* means a day other than a day that is a Saturday, a Sunday or a public holiday.

## **6 Objection to appointment of notary public**

The Attorney-General or any other person may object to the appointment of a person as a notary public on an application under section 5 and may be heard on the hearing of the application if, at least 5 days before the date fixed for the hearing of the application, he or she—

- (a) files in the office of the Supreme Court a notice of objection to the appointment of the applicant as a notary public; and
- (b) serves on the applicant a copy of the notice of objection together with a copy of every affidavit that he or she intends to use in support of his or her objection.

## **7 Appointment of notary public**

If, on hearing an application under section 5, the Supreme Court is satisfied that the applicant is eligible to be appointed as a notary public, the court shall make an order appointing the applicant to be a notary public for the ACT.



**8 Roll of notaries public**

- (1) The registrar shall keep a roll to be known as the roll of notaries public for the Australian Capital Territory.
- (2) Subject to section 9, the registrar shall enter on the roll—
  - (a) the name of each person appointed under section 7 to be a notary public; and
  - (b) the date the entry is made.
- (3) A person whose name is entered on the roll under this section must sign the roll.
- (4) The roll shall be open for public inspection at the office of the registrar without fee during the ordinary business hours of the offices of the Supreme Court.

**9 Oath or affirmation by notary public**

- (1) A person appointed under section 7 to be a notary public shall, before having his or her name entered on the roll, take an oath or make an affirmation of office in accordance with the form in schedule 1.
- (2) An oath or affirmation shall be taken or made before a judge of the Supreme Court.

**10 Certificate of appointment**

- (1) On the application of a person whose name appears on the roll, the registrar shall issue to the person a certificate, signed by the registrar and under the seal of the Supreme Court, in accordance with the form in schedule 2.
- (2) The registrar may, on the application of a person to whom a certificate was issued under subsection (1), issue to that person a duplicate of the certificate if the registrar is satisfied that the certificate has been lost or destroyed or that a duplicate should, for any other reason, be issued.

- (3) A person whose name is on the roll commits an offence if—
- (a) the person's name is removed from the roll under section 13; and
  - (b) the person fails to return the certificate or duplicate to the registrar within 1 month after the day the person's name is removed.

Maximum penalty: 5 penalty units.

- (4) An offence against this section is a strict liability offence.

## **11 Evidence**

- (1) In any proceedings in a court, a certificate signed by the registrar stating that on a date or dates or during a period specified in the certificate the name of a person specified in the certificate was or was not entered on the roll is evidence of the matters so stated.
- (2) For subsection (1), a document that purports to have been signed by the registrar shall be taken to have been so signed unless the contrary is proved.

## **12 Exercise of functions by notaries**

A person whose name is on the roll may exercise within the ACT the functions of a notary public.

## **13 Removal from roll**

- (1) If, on the application of any person, it is proved to the satisfaction of the Supreme Court that the conduct of a notary public has been such as to justify it in so doing, the court may, by order, direct that the name of the notary public be removed from the roll.
- (2) If the Supreme Court makes an order under subsection (1) directing that the name of a notary public be removed from the roll, the registrar shall alter the roll by removing the name of that person.

(3) If—

- (a) the Supreme Court makes an order under the Legal Practitioners Act directing that the name of a legal practitioner be removed from the roll of legal practitioners kept under the Legal Practitioners Act; and
- (b) the legal practitioner is a person whose name is on the roll of notaries public for the Australian Capital Territory;

the registrar shall alter the roll referred to in paragraph (b) by removing the name of that person.

(4) If—

- (a) an unrestricted practising certificate issued to a person—
  - (i) is cancelled by the law society under the Legal Practitioners Act; or
  - (ii) is, by force of that Act, cancelled; and
- (b) the person to whom the certificate was issued is a person whose name is on the roll;

the registrar shall alter the roll by removing the name of that person.

(5) If—

- (a) the registrar alters the roll by removing the name of a person whose unrestricted practising certificate is cancelled by the law society under the Legal Practitioners Act; and
- (b) the Supreme Court makes an order under that Act revoking the cancellation of that certificate;

the registrar shall alter the roll by restoring the name of that person.

(6) If—

- (a) an unrestricted practising certificate issued to a person—
  - (i) is cancelled by the law society under the Legal Practitioners Act; or

- (ii) is, by force of that Act, cancelled; and
  - (b) the person to whom the certificate was issued is a person whose name is on the roll;
- the law society shall forthwith notify the registrar of the cancellation of the certificate.

#### **14 Pretending to be notary public**

- (1) A person commits an offence if—
  - (a) the person is not a notary public; and
  - (b) the person—
    - (i) pretends to be entitled, qualified or able to exercise the functions of a notary public; or
    - (ii) uses the title of notary public; or
    - (iii) otherwise pretends to be a notary public.

Maximum penalty: 50 penalty units.

**Example for par (b)**

using ‘notary public for the ACT’ on letterhead or in an advertisement

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) Strict liability applies to subsection (1) (a).

#### **15 Service of documents**

- (1) A document shall be served on the Attorney-General by post.
- (2) A document may be served on the law society—
  - (a) by delivering the document to the secretary of the law society; or
  - (b) by leaving the document at the office of the law society with a person apparently employed by the law society.

**16 Jurisdiction of Supreme Court**

Jurisdiction to hear and determine applications under sections 5 and 13 is vested in the Supreme Court.

## Schedule 1

(see s 9)

### Oath

I swear by Almighty God 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 office of a notary public according to the best of my skill and ability.

### Affirmation

I solemnly declare and affirm 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 office of a notary public according to the best of my skill and ability.

(see s 10)

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Registrar of the Supreme Court

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired



### 3 Legislation history

This Act was originally a Commonwealth ordinance—the *Notaries Public Ordinance 1984* A1984-33 (Cwlth).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* No 21, s 5 on 11 May 1989 (self-government day).

Before 11 May 1989, ordinances commenced on their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

#### Legislation before becoming Territory enactment

##### **Notaries Public Act 1984 No 33**

notified 23 July 1984

commenced 23 July 1984

as amended by

##### **Self-Government (Consequential Amendments) Ordinance 1989 No 38 sch 1**

notified 10 May 1989 (Cwlth Gaz 1989 No S160)

s 1, s 2 commenced 10 May 1989 (s 2 (1))

sch 1 commenced 11 May 1989 (s 2 (2) and see Cwlth Gaz 1989 No S164)

#### Legislation after becoming Territory enactment

##### **Legal Practitioners (Amendment) Act 1994 No 76 sch**

notified 23 November 1994 (Gaz 1994 No S247)

commenced 23 November 1994 (s 2)

##### **Statute Law Revision (Penalties) Act 1994 No 81 sch**

notified 29 November 1994 (Gaz 1994 No S253)

s 1, s 2 commenced 29 November 1994 (s 2 (1))

sch commenced 29 November 1994 (s 2 (2) and Gaz 1994 No S269)

## Endnotes

### 4 Amendment history

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#### **Legal Practitioners (Consequential Amendments) Act 1997 No 96 sch 1**

notified 1 December 1997 (Gaz 1997 No S380)  
s 1, s 2 commenced 1 December 1997 (s 2 (1))  
sch 1 commenced 1 June 1998 (s 2 (2))

#### **Legislation (Consequential Amendments) Act 2001 No 44 pt 260**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 260 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

#### **Criminal Code Harmonisation Act 2005 A2005-54 sch 1 pt 1.32**

notified LR 27 October 2005  
s 1, s 2 commenced 27 October 2005 (LA s 75 (1))  
sch 1 pt 1.32 commenced 24 November 2005 (s 2)

## 4 Amendment history

### **Notes**

s 3 sub A2005-54 amdt 1.225

### **Offences against Act—application of Criminal Code etc**

s 3A ins A2005-54 amdt 1.225

### **General qualification for appointment as notary public**

s 4 am 1994 No 76 sch

### **Roll of notaries public**

s 8 am A2005-54 amdt 1.226

### **Certificate of appointment**

s 10 am 1994 No 81 sch; A2005-54 amdt 1.227

### **Removal from roll**

s 13 am 1997 No 96 sch 1

### **Pretending to be notary public**

s 14 am 1994 No 81 sch  
sub A2005-54 amdt 1.228

### **Amendment of Seat of Government (Administration) Ordinance**

s 17 om 1989 No 38 sch 1

### **Repeal**

s 18 om 2001 No 44 amdt 1.2959

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Ord 1989 No 38	31 July 1991
2	Act 1994 No 81	28 February 1995
3	Act 1997 No 96	31 March 1999
4	A2001-44	9 August 2002

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