

# AUSTRALIAN CAPITAL TERRITORY

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## Notaries Public Ordinance 1984

### No. 33 of 1984

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 16 July 1984.

N. M. STEPHEN  
Governor-General

By His Excellency's Command,

GARETH EVANS  
Attorney-General

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An Ordinance relating to Notaries Public

### Short title

1. This Ordinance may be cited as the *Notaries Public Ordinance 1984*.<sup>1</sup>

### Interpretation

2. (1) In this Ordinance, unless the contrary intention appears—

“Legal Practitioners Ordinance” means the *Legal Practitioners Ordinance 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) Where an expression that is defined in the Legal Practitioners Ordinance is used in this Ordinance, then, unless the contrary intention appears,

the expression has the same meaning for the purposes of this Ordinance as it has in the Legal Practitioners Ordinance.

### **Established Notaries**

**3. (1)** A person who, immediately before the commencement of this Ordinance, held an appointment by the Court of Faculties of His Grace the Lord Archbishop of Canterbury to act as a Notary Public in the Territory may, at any time during the period of 6 months commencing on the date of commencement of this Ordinance, apply in writing to the Registrar for enrolment as a Notary Public for the Territory.

**(2)** Where, on an application made in accordance with sub-section (1), the Registrar is satisfied that the applicant held, immediately before the commencement of this Ordinance, an appointment by the Court of Faculties of His Grace the Lord Archbishop of Canterbury to act as a Notary Public in the Territory, the Registrar shall enter on the Roll the name of the applicant and the date on which the entry is made.

**(3)** A person whose name is entered on the Roll under sub-section (2) shall be deemed to have been appointed under this Ordinance as a Notary Public for the Territory on the date on which the entry was made.

### **General qualification for appointment as Notary Public**

**4. (1)** A person is eligible for appointment as a Notary Public if—

- (a) he holds a current unrestricted practicing certificate;
- (b) he is competent to act as a Notary Public; and
- (c) he is of good fame and character.

**(2)** A person who, by virtue of an order under section 15K of the Legal Practitioners Ordinance, is to be deemed to be a person who holds an unrestricted practising certificate shall not, for the purposes of sub-section (1), be taken to hold a current unrestricted practising certificate.

### **Application for appointment as Notary Public**

**5. (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 one month after the date on which the application is filed.

(4) An applicant shall, within 2 business days after filing an application under this section, cause a copy of the application, together with a copy of the affidavit verifying the application, to be served on the Attorney-General and on the Law Society.

(5) An applicant shall cause a notice of the making of an application under this section to be published in a newspaper circulating daily in the Territory not later than 7 days after the date on which the application was filed.

(6) In this section, “business day” means a day other than a day that is a Saturday, Sunday or a public holiday.

### **Objection to appointment of Notary Public**

6. 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 upon the hearing of the application if, at least 5 days before the date fixed for the hearing of the application, he—

- (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 intends to use in support of his objection.

### **Appointment of Notary Public**

7. Where, upon 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 Territory.

### **Roll of Notaries Public**

8. (1) The Registrar shall cause to be kept 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 on which the entry is made.

(3) A person whose name is entered on the Roll under this section or section 3 shall 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.

### **Oath or affirmation by Notary Public**

9. (1) A person appointed under section 7 to be a Notary Public shall, before having his 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.

### **Certificate of appointment**

10. (1) On the application of a person whose name appears on the Roll, the Registrar shall issue to the person a certificate, under the hand of the Registrar and 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 sub-section (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) Where the name of a person is removed from the Roll under section 13, the person shall, within 1 month after the date on which his name was so removed, forward to the Registrar the certificate, or the duplicate of the certificate, issued to him under this section.

Penalty: \$100.

### **Evidence**

11. (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 the purposes of sub-section (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.

### **Exercise of powers by Notaries**

**12.** A person whose name is on the Roll may exercise and perform within the Territory the powers and functions of a Notary Public.

### **Removal from Roll**

**13. (1)** Where, 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) Where the Supreme Court makes an order under sub-section (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) Where—

- (a) the Supreme Court makes an order under the Legal Practitioners Ordinance directing that the name of a barrister and solicitor be removed from the Roll of Barristers and Solicitors; and
- (b) the barrister and solicitor 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) Where—

- (a) an unrestricted practising certificate issued to a person—
  - (i) is cancelled by the Law Society under the Legal Practitioners Ordinance; or
  - (ii) is, by force of that Ordinance, 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) Where—

- (a) the Registrar alters the Roll by removing the name of a person whose unrestricted practicing certificate is cancelled by the Law Society under the Legal Practitioners Ordinance; and
- (b) the Supreme Court makes an order under that Ordinance revoking the cancellation of that certificate,

the Registrar shall alter the Roll by restoring the name of that person.

**(6) Where—**

- (a) an unrestricted practising certificate issued to a person—
  - (i) is cancelled by the Law Society under the Legal Practitioners Ordinance; or
  - (ii) is, by force of that Ordinance, 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.

**Offences**

**14. (1)** Subject to sub-section (3), a person whose name is not on the Roll shall not—

- (a) advertise or hold himself out (directly or indirectly) as being, or in any manner pretend to be, or take or use the name or title (alone or in conjunction with any other title, word or letter) of, a Notary Public for the Territory; or
- (b) advertise or hold himself out, directly or indirectly, by any name, word, letter, title or designation as being entitled, qualified, able or willing to act as a Notary Public for the Territory.

Penalty: \$2,000.

**(2)** Nothing in sub-section (1) applies to or in relation to a person who, immediately before the commencement of this Ordinance, held an appointment by the Court of Faculties of His Grace the Lord Archbishop of Canterbury to act as a Notary Public in the Territory until—

- (a) the period of 6 months commencing on the date of commencement of this Ordinance expires; or

- (b) where the person makes an application in accordance with section 3—the Registrar determines the application.

### Service of documents

- 15. (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.

### Jurisdiction of Supreme Court

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

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

17. The Second Schedule to the *Seat of Government (Administration) Ordinance 1930* is amended by inserting in Part 1—

“Notaries Public Ordinance 1984”

after—

“Married Women’s Property Ordinance 1968”.

### Repeal

18. The Act passed in the forty-first year of the reign of His late Majesty King George the Third entitled “An act for the better regulation of publick notaries in England” shall cease to be in force in the Territory.

## SCHEDULE 1

Section 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.

**SCHEDULE 2**

Section 10

**CERTIFICATE OF APPOINTMENT OF NOTARY PUBLIC**

I, A.B., the Registrar of the Supreme Court of the Australian Capital Territory, do hereby certify that C.D. of (place of residence or business), (occupation), is a Notary Public for the Australian Capital Territory and that his name was entered on the Roll of Notaries Public for the Territory on the                      day of                      19                      ,

and still remains on the Roll.

Dated at Canberra this                      day of                      19                       
(L.S.)

Registrar of the Supreme Court

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**NOTE**

1. Notified in the *Commonwealth of Australia Gazette* on 23 July 1984.