

EXPLANATORY STATEMENT
AUSTRALIAN CAPITAL TERRITORY
Notaries Public Ordinance 1984
No. 33 of 1984

This Ordinance provides for the appointment of notaries public for the Australian Capital Territory by the A.C.T. Supreme Court.

Notaries practising in the Territory were formerly appointed, as from New South Wales, by the Court of Faculties of the Archbishop of Canterbury pursuant to the Ecclesiastical Licences Act 1533 and the Public Notaries Act 1801. Notaries practising in Victoria, Queensland and Tasmania are appointed in the same way.

The Law Reform Commission of the A.C.T. in its Report on Imperial Acts in Force in the A.C.T. described as 'preposterous' the position whereby notaries were admitted in England, there being no appropriate local legislation. It recommended the introduction of legislation for the admission of notaries in the A.C.T. In South Australia, Western Australia and the Northern Territory there is local legislation for the appointment of notaries public.

The functions of a notary public are not defined by statute. They are based on practice and custom - particularly international commercial and mercantile custom under which recognition is given in one country to acts and functions carried out by a notary in another country. Generally speaking, the duty of a notary public is to attest contracts, deeds and other instruments that are to be used abroad and to give a certificate of the execution of the documents. This certificate is then given evidentiary recognition in the country concerned.

The functions of a notary public include such matters as the presentation of bills of exchange, especially foreign bills, for acceptance or payment; the noting and drawing up of ships' protests; administering oaths and taking affidavits for a variety of purposes; and attesting the execution of powers of attorney.

In view of the functions and duties of a notary, it has been the practice for a very long time only to appoint legal practitioners as notaries in or for Australia. This practice is reflected in the Ordinance.

Details of the Ordinance are as follows:

Section 1 provides that the Ordinance may be cited as the Notaries Public Ordinance 1984.

Section 2 contains interpretation provisions for the purposes of the Ordinance.

Section 3 will enable a person who currently holds an appointment as a notary public in the A.C.T. to apply to the Registrar of the Supreme Court for enrolment under the Ordinance as a notary public for the Territory. A six month period after the commencement of the Ordinance is given for the application to be made. If the Registrar is satisfied that the applicant holds a current appointment he is required to enter the applicant's name on the Roll of Notaries Public to be kept under the Ordinance.

Section 4 contains the grounds under which a person is eligible for appointment as a notary public. The grounds are: the holding of a current unrestricted practising certificate issued pursuant to the Legal Practitioners

Ordinance 1970, competency to act as a notary public, and good

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fame and character.

Section 5 requires an application for appointment to be made to the A.C.T. Supreme Court. A copy of the application must be served on the Attorney-General and the Law Society of the A.C.T. by the applicant within 2 days of making the application.

An applicant is also required, not later than 7 days after filing the application in the Supreme Court, to cause a notice of the making of the application to be published in a daily newspaper circulating in the Territory.

Section 6 entitles the Attorney-General or any other person (which includes the Law Society) to object to the appointment of a person as a notary public and to be heard before the Supreme Court on the hearing of the application providing he gives at least 5 days notice to the applicant.

Section 7 requires the Supreme Court, upon hearing an application, to appoint an applicant to be a notary public if it is satisfied that the applicant is eligible to be so appointed.

Section 8 obliges the Registrar of the Supreme Court to keep a Roll of Notaries Public for the A.C.T. and to enter on it the names of all notaries public appointed for the A.C.T.

Section 9 requires a person appointed to be a notary public to take the oath or affirmation of office prescribed in Schedule 1 to the proposed Ordinance before having his name entered on the Roll.

Section 10 makes provision for the issue of certificates of appointment, replacement certificates and the return of certificates to the Registrar. Failure to return a certificate within 1 month of a name being removed from the roll will incur a penalty of \$100.

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Section 11 contains evidentiary provisions in relation to a certificate of appointment signed by the Registrar.

Section 12 provides that a person appointed a notary public under the Ordinance may exercise and perform, in the Territory, the powers and functions of a notary public. As mentioned in the introduction, these powers and functions are almost all to be found in practice and custom.

Section 13 enables the Supreme Court to order removal of the name of a person from the Roll of Notaries Public for misconduct. The name of a person is also to be removed where that name has been removed from the Roll of Barristers and Solicitors pursuant to an order of the Supreme Court under the Legal Practitioners Ordinance 1970 or where an unrestricted practising certificate issued to that person is cancelled. The name is to be restored to the Roll if the Supreme Court makes an order revoking the cancellation of the certificate.

Section 14 makes it an offence for a person to hold himself out as a notary public if his name is not on the Roll of Notaries Public for the Territory. Such action will incur a penalty of \$2,000.

Section 15 provides that documents to be served on the Attorney-General shall be served by post and that documents to be served on the Law Society of the A.C.T. shall be delivered to the Secretary of the Society or left with an employee of the Society at the Society's office.

Section 16 vests jurisdiction under the Ordinance to determine applications for appointment as a notary public in the A.C.T. Supreme Court.

Section 17 amends the Seat of Government (Administration) Ordinance 1930 to give administrative responsibility for the Ordinance to the Attorney-General.

Section 18 provides that the Notaries Public Act 1801 is to cease to apply in the A.C.T.

Schedule 1 provides for the form of oath or affirmation to be taken for the purposes of section 9.

Schedule 2 provides for the form of certificate of appointment of a notary public for the purposes of section 10.

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Authorised by the
Attorney-General