

2. (ACT) Law Society of the Australian Capital Territory Professional Conduct Rules r 39.2(b)-(d); (ACT) Australian Capital Territory Barristers Rules r 117  
(NSW) Legal Profession Act 1987 s 38K  
(QLD) Queensland Law Society Rule 1987 r 80; (QLD) Queensland Barristers' Rules r 116. See also (QLD) Solicitors' Handbook r 1.01.  
(SA) Rules of Professional Conduct & Practice r 36.2  
(TAS) Rules of Practice 1994 r 7(2), 7(3)  
(VIC) Professional Conduct and Practice Rules 2000 r 2(1)(c), 2(3)  
(WA) Professional Conduct Rules r 4.2, Sch 5 paras 4 (whether a lawyer may describe himself or herself as an expert), 5 (whether expertise in all areas of the law can be claimed), 6 (specialisation).  
As to advertising by lawyers generally see [250-1595].
3. (ACT) Law Society of the Australian Capital Territory Professional Conduct Rules r 39.2(b). See also *ibid* r 39.2(d) (care should be taken using the term 'specialist' and alternative terms may be more appropriate)  
(SA) Rules of Professional Conduct & Practice r 36.2  
(TAS) Rules of Practice 1994 r 7(2). See also *ibid* r 7(3) (*ibid* r 7(2) does not apply to the practice of mediation or arbitration). For mediation and arbitration see *ibid* r 9.
4. (ACT) Law Society of the Australian Capital Territory Professional Conduct Rules r 39.2(c)  
(QLD) Solicitors' Handbook r 1.01  
(SA) Rules of Professional Conduct & Practice r 36.2.
5. As to professional conduct rules see [250-5] notes 4, 7.
6. As to lawyers who practise exclusively as barristers see [250-1460].
7. (ACT) Australian Capital Territory Barristers Rules r 117  
(QLD) Queensland Barristers' Rules r 116.
8. (NSW) Legal Profession Act 1987 s 38K  
(VIC) Professional Conduct and Practice Rules 2000 r 2(3).
9. As to lawyers who practise as solicitors see [250-1495].
10. (QLD) Queensland Law Society Rule 1987 r 80.
11. (WA) Professional Conduct Rules r 4.2, Sch 5 paras 4, 5 (expertise), 6 (specialisation).

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**[250-1730] General** The profession of notary public is a very old one. Its origin can be traced back to ancient Roman times — to the development of the role of scribes from the simple copying and transcribing of documents to responsibility for recording public proceedings, transcribing state papers, supplying magistrates with legal forms and registering their judgments, and drafting private instruments such as deeds, wills and conveyances.<sup>1</sup>

The profession of notary public is now found in many nations around the world. In Australia, the profession of notary public has historically been, and remains, closely tied to the profession in the United Kingdom.<sup>2</sup> In some jurisdictions in Australia, notaries public continue to be appointed by the Court of Faculties<sup>3</sup> in the United Kingdom.<sup>4</sup> In some jurisdictions, regulation specifically provides that the functions of a notary public are those that may be exercised by a notary public in the United Kingdom.<sup>5</sup>

A notary public's role generally includes drawing, attesting or certifying deeds, contracts and other instruments that are to be used abroad. Duly signed and sealed certificates attesting the execution of such documents are recognised as proof of the act being done in the notary public's presence and attested by him or her in all countries where notarial acts are recognised. A notary public may also take affidavits and statutory declarations, prepare wills or other testamentary documents, protest, or note protests, of transactions relating to bills of exchange, and draw up protests or other formal papers relating to shipping.<sup>6</sup>

Notes

1. For a detailed history of the origin and development of the profession of notary public see *Brooke's Notary*, 12th ed, Sweet & Maxwell, London 2002, pp 1-17.
2. For a discussion of the profession of notaries public in Australia see *Re Public Notaries Act 1985; Applications of Fitzpatrick and Partington* (1989) 18 NSWLR 11. See also Leyser J, 'Notaries in Australia', (1964) 37 *ALJ* 308.

3. As to the Court of Faculties see [250-1735] note 19.
4. As to the appointment of notaries public in Australia see [250-1735].
5. See [250-1750]. The functions of notaries public in the United Kingdom are not defined by any statutory provisions or rules. As to details of the functions of notaries public in the United Kingdom generally see *Halsbury's Laws of England*, 4th ed, Vol 33, paras 726-731.
6. As to the details of functions of notaries public in Australia see [250-1750].

**[250-1735] Appointment as a notary public** In all jurisdictions except Queensland, specific provision is made for the appointment of notaries public.<sup>1</sup> The eligibility requirements for appointment as a notary public vary between jurisdictions.

In the Australian Capital Territory, a person is eligible for appointment if he or she holds a current unrestricted practising certificate,<sup>2</sup> is competent to act as a notary public and is of good fame and character.<sup>3</sup>

In the Northern Territory, a person is eligible for appointment if he or she is of good fame and character, competent to act as a public notary, and there is a need for a public notary in the area where the applicant intends to practise.<sup>4</sup>

In New South Wales, a person cannot be appointed as a public notary unless he or she is a barrister<sup>5</sup> or solicitor<sup>6</sup> of not less than five years standing.<sup>7</sup> Appointment as a public notary is by the Supreme Court of New South Wales, which may only hear and determine an application by a person approved by the Legal Practitioners Admission Board<sup>8</sup> as a suitable candidate for appointment.<sup>9</sup>

In South Australia, a person may be appointed as a public notary at the discretion of the Supreme Court of South Australia.<sup>10</sup>

In Tasmania, a person may be appointed as a notary public if the Supreme Court of Tasmania is satisfied that he or she:<sup>11</sup>

- (1) is a barrister or solicitor of not less than five years standing;
- (2) is of good fame and character;
- (3) is competent to act as a notary public; and
- (4) has other qualifications as prescribed by the rules of the Supreme Court of Tasmania,

and that there is a need for the appointment of a notary public in the district where that person is practising as a barrister or solicitor.<sup>12</sup>

In Victoria, a person cannot be appointed as a public notary unless the person:<sup>13</sup>

- (1) is a natural person;
- (2) is admitted to legal practice in Victoria;
- (3) has held for a period of five years a practising certificate authorising the person to engage in legal practice as a principal, unless this requirement is dispensed with or varied by the Board of Examiners for Legal Practitioners; and
- (4) has completed, to the satisfaction of the Board of Examiners for Legal Practitioners, a course of study related to notarial practice approved by the Council of Legal Education.

An applicant must obtain a certificate of eligibility from the Board of Examiners for Legal Practitioners<sup>14</sup> and then apply to the Supreme Court of Victoria constituted by the Chief Justice for appointment and enrolment as a public notary.<sup>15</sup>

In Western Australia, an appointment as a public notary may only be made by the Full Court of the Supreme Court of Western Australia.<sup>16</sup> A person seeking to be appointed as a public notary must satisfy the Chief Justice of the Supreme Court of Western Australia that he or she:<sup>17</sup>

- (1) is on the roll of Practitioners under the (WA) Legal Practitioners Act 1893;<sup>18</sup>
- (2) is a practitioner of the court of three years standing or, if not, has practised for seven years as a notary public elsewhere;
- (3) is of good character and reputation; and
- (4) is competent to act as a notary public,

and that there is a need for the appointment of a notary public in the district where the applicant is practising.

In each of these jurisdictions, an application for an appointment as a notary public must be made and considered in a prescribed manner,<sup>19</sup> a roll of notaries public must be maintained<sup>20</sup> and certificates of appointment must be issued.<sup>21</sup>

In Queensland, appointment of notaries public is by the Court of Faculties in the United Kingdom.<sup>22</sup> The Court of Faculties attaches great weight to the view of the local notarial society as to whether or not a person should be appointed as a notary public.<sup>23</sup> However, the Court of Faculties is not bound by the view of the local notarial society.<sup>24</sup> In determining whether or not a person should be appointed as a notary public, the most important consideration for the Court of Faculties is to ensure that the number of notaries public is sufficient for the convenience of the public.<sup>25</sup> There is no rule that a person must be a solicitor to be appointed as a notary public, though as a matter of practice, and for the protection of the public, appointments are generally granted to solicitors.<sup>26</sup> In the usual course of events, the applicant must have practised in the jurisdiction for a period of years.<sup>27</sup> There is no rule that a person will not be appointed as a notary public unless a demonstrated need for an appointment in the vicinity in which the applicant would practise can be shown.<sup>28</sup>

#### Notes

1. (ACT) Notaries Public Act 1984  
(NT) Public Notaries Act 1992  
(NSW) Public Notaries Act 1997  
(SA) Legal Practitioners Act 1981 Pt 7  
(TAS) Notaries Public Act 1990  
(VIC) Public Notaries Act 2001  
(WA) Public Notaries Act 1979.
2. This does not include a practitioner who, by virtue of (ACT) Legal Practitioners Act 1970 s 30, is deemed to hold an unrestricted practising certificate: (ACT) Notaries Public Act 1984 s 4(2). As to holding an unrestricted practising certificate in the Australian Capital Territory see generally [250-180].
3. Ibid s 4(1). See also ibid s 3 (established notaries).
4. (NT) Public Notaries Act 1992 s 4(2). An application for appointment as a public

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26. *Bailleau v Victorian Society of Notaries* [1904] P 180. See also *Re Public Notaries Act 1985; Applications of Fitzpatrick and Partington* (1989) 18 NSWLR 11. However, no person who has not been a solicitor has been appointed as a notary public in Victoria since 1904.
27. *Re an application by Venizelakos for a notarial faculty for Victoria* (unreported, Court of Faculties, Owen M, 17 June 1997).
28. *Re an application by Venizelakos for a notarial faculty for Victoria* (unreported, Court of Faculties, Owen M, 17 June 1997).

**[250-1740] Termination of appointment** In all jurisdictions except Queensland, legislation generally provides for the termination of a person's appointment as a notary public and the removal of his or her name from the roll of notaries public where he or she is no longer qualified to act in that capacity or has engaged in conduct that is deemed to warrant the cancellation of an appointment as a notary public.<sup>1</sup> A public notary may resign his or her appointment as a public notary.<sup>2</sup>

In Queensland, notaries public are subject to supervision by the Court of Faculties.<sup>3</sup> The Court of Faculties may strike a notary public off the roll of notaries for misconduct as a notary or for other good cause.<sup>4</sup>

Notes

1. (ACT) Notaries Public Act 1984 s 13 (removal from roll by Supreme Court of the Australian Capital Territory). See also *ibid* s 10(3) (return of certificate of appointment).  
 (NT) Public Notaries Act 1992 ss 8 (cancellation and suspension of appointment), 9(3) (cessation of appointment), 9(4) (return of certificate of appointment).  
 (NSW) Public Notaries Act 1997 ss 7(4) (removal of name from roll where person ceases to be a barrister or solicitor), 7(5) (removal where order made to cease acting as notary public), 14 (application of (NSW) Legal Profession Act 1987 Pt 10).  
 (SA) Legal Practitioners Act 1981 s 93.  
 (TAS) Notaries Public Act 1990 ss 7(4) (removal of name from roll where person removed from roll of legal practitioners or barristers), 10 (discipline of notaries public).  
 (VIC) Public Notaries Act 2001 s 8(6) (removal from roll by Supreme Court of Victoria where public notary ceases to be a person admitted to legal practice in Victoria). As to ceasing to be admitted to legal practice see (VIC) Supreme Court (Miscellaneous Civil Proceedings) Rules 1998 r 15A.09(4).  
 (WA) Public Notaries Act 1979 s 16 (court may suspend and strike off public notaries). See also *ibid* s 17 (judges may make rules).  
 There are no equivalent provisions in Queensland.
2. (NT) Public Notaries Act 1992 s 9 (cessation of appointment of public notary).  
 (NSW) Public Notaries Act 1997 s 7(3).  
 (TAS) Notaries Public Act 1990 s 7(3).  
 (VIC) Public Notaries Act 2001 s 8(5) (removal by Supreme Court of Victoria at request of public notary). As to procedure for removal see (VIC) Supreme Court (Miscellaneous Civil Proceedings) Rules 1998 r 15A.09(1), 15A.09(2), 15A.09(3).  
 There are no equivalent provisions in the other jurisdictions.
3. There is no clear statutory authority under which notaries public are supervised by the Court of Faculties. It is taken to be part of its inherent powers which continue to apply in Queensland as a result of historical accident and consent. As to the Court of Faculties see [250-1735] note 19.
4. *Re Champion* [1906] P 86; *Re Prior; Ex parte Incorporated Society of Provincial Notaries Public of England and Wales* [1908] WN 193; *Re Terrill; Ex parte Incorporated Society of Provincial Notaries Public of England and Wales* [1908] WN 194. Where a solicitor who

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was also a notary was struck off the roll of solicitors, the Court of Faculties followed the finding of fact, but admitted proof of further facts since that decision: *Re a Notary Public; Ex parte Incorporated Society of Provincial Notaries Public of England and Wales* The Times, 19 December 1908. In recent years, the Court of Faculties has also exercised the power of admonishing a notary public or requiring an undertaking to remedy or not to engage in further misconduct: *Society of Public Notaries of London v Preueneers* (unreported, Master of Faculties, 13 February 1989); *Re Morrison* (unreported, Master of Faculties, 2 June 1983). The Court of Faculties may also suspend a notary public from practice: *Society of Public Notaries of London v Preueneers* (unreported, Master of Faculties, 13 February 1989).

**[250-1745] Person not to act as a notary public if not qualified**  
Generally, a person who is not a notary public is not permitted to advertise, hold himself or herself out or act as a notary public, or make any notarial act, or use the title 'notary public'.<sup>1</sup>

*Note*

- (ACT) Notaries Public Act 1984 s 14  
(NSW) Public Notaries Act 1997 s 13(1). A person named on the roll who, while not being a barrister or solicitor, practises as a public notary is guilty of an offence: *ibid* s 13(2). See also *ibid* s 15 (proceedings for offences).  
(SA) Legal Practitioners Act 1981 s 94  
(TAS) Notaries Public Act 1990 s 11  
(VIC) Public Notaries Act 2001 s 9  
(WA) Public Notaries Act 1979 s 19.
- There are no equivalent provisions in the Northern Territory and Queensland. As to notarial acts see [250-1755].

**[250-1750] Functions of notaries public** In all jurisdictions except New South Wales and Queensland, specific provision is made as to the functions of notaries public.<sup>1</sup>

Generally, a notary public in Australia may exercise all the powers which may be lawfully exercised by a notary public in the United Kingdom.<sup>2</sup> A notary public in the United Kingdom has the power to prepare legal documents,<sup>3</sup> prepare any document required in connection with conveyancing or succession,<sup>4</sup> protest or note protests of bills of exchange,<sup>5</sup> note and draw up ships' protests,<sup>6</sup> draw bonds for payment,<sup>7</sup> administer oaths and take declarations.<sup>8</sup>

In New South Wales, a public notary may not carry out notarial work for his or her employer or a client of his or employer unless he or she is employed by a solicitor,<sup>9</sup> a solicitor corporation<sup>10</sup> or a person prescribed by regulation.<sup>11</sup>

*Notes*

- (ACT) Notaries Public Act 1984 s 12 (person may exercise and perform the powers and functions of a notary public)  
(NT) Public Notaries Act 1992 s 7 (powers of a public notary include certifying documents to be filed or registered in a foreign country, taking affidavits for use interstate or internationally, protesting, or noting protest of bills of exchange or bills of lading, verifying documents and taking affidavits to comply with the requirements

of a foreign law, and the exercise of the powers and authorities that are usually exercised by a public notary in the United Kingdom)

(SA) Legal Practitioners Act 1981 s 91(4) (notary public has all the powers and authorities (including the power to take affidavits) exercisable by law or custom by public notaries)

(TAS) Notaries Public Act 1990 s 9 (notary public may exercise all the powers and authorities that may lawfully be exercised by a notary public in the United Kingdom)

(VIC) Public Notaries Act 2001 s 10 (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 the Act)

(WA) Public Notaries Act 1979 s 15 (general notary public may exercise all the powers and authorities which may be lawfully exercised by a notary public in the United Kingdom or in Western Australia throughout the State; district notary public may exercise all those powers and authorities in the district for which he or she is appointed).

2. (NT) Public Notaries Act 1992 s 7(e)
- (TAS) Notaries Public Act 1990 s 9(a)
- (WA) Public Notaries Act 1979 s 15.

There are no equivalent provisions in the other jurisdictions.

3. In England and Wales, a notary public is entitled to:

- (1) prepare deeds, agreements and wills relating to real and personal property;
- (2) prepare deeds and other documents intended to take effect in the Commonwealth overseas and in foreign states in such form and language as may conform to the law of the place where the deed or document is intended to operate;
- (3) verify, authenticate, and attest by his or her official seal the execution of deeds or other documents, contracts, and powers of attorney;
- (4) prepare mercantile documents; and
- (5) certify copies, and to translate and verify the translation of documents in any foreign language into the English language and vice versa: *Halsbury's Laws of England*, 4th ed, Vol 33, para 726.

4. For details as to the powers of a notary public in the United Kingdom to prepare any document in connection with conveyancing or succession see *Halsbury's Laws of England*, 4th ed, Vol 33, para 727.

5. For details as to the powers of a notary public in the United Kingdom to protest, or note protest, of bills of exchange see *Halsbury's Laws of England*, 4th ed, Vol 33, para 728.

6. For details as to the powers of a notary public in the United Kingdom to note and draw up ships' protests see *Halsbury's Laws of England*, 4th ed, Vol 33, para 729.

7. For details as to the powers of a notary public in the United Kingdom to draw bonds for payment see *Halsbury's Laws of England*, 4th ed, Vol 33, para 730.

8. For details as to the powers of a notary public in the United Kingdom to administer oaths and take declarations see *Halsbury's Laws of England*, 4th ed, Vol 33, para 731.

9. For the meaning of 'solicitor' see (NSW) Legal Profession Act 1987 s 3(1); (NSW) Public Notaries Act 1997 s 3. See also [250-1] note 8.

10. For the definition of 'solicitor corporation' see (NSW) Legal Profession Act 1987 s 3(1).

11. (NSW) Public Notaries Act 1997 s 11 (employed public notaries not to carry out certain work). See also *Application of Michaelis* (1997) 42 NSWLR 218 at 224 per McLelland CJ (undesirable for a notary public to perform notarial acts in which his or her employer has an interest, including the certification of the authenticity of the employer's documents). See also (NSW) Public Notaries Act 1997 s 12 (fees for notarial work).

[250-1755] **Notarial acts** A notarial act is any instrument of a notary public authenticated by his or her signature and official seal, certifying the due

execution in his or her presence of some fact or thing done in his entry, endorsement, or instrument in the execution of the duty

#### Note

1. *Brooke's Notary*, 12th ed of notarial acts see ibid

[250-1760] **Proof by notary** to the presentment of a for taking place in the jurisdiction itself, in a court of justice or in the notarial act.<sup>1</sup> However, where a bill was presented, entries by of the presentment and dish on the bill, upon proof of Where a notarial act is v: in evidence without further where the form of the no

#### Notes

1. *Chesmer v Noyes* (181 331 at 343 per Lord
2. *Poole v Dicus* (1835)
3. *Re Trade Mark of Rya* 460; 24 ALR 194 (just signed by a notary public in the Will of Vickerm of power of attorney acts by foreign notary
4. *Re Sutherland (dec'd)*

execution in his or her presence of a deed, contract, or other writing, or verifying some fact or thing done in his or her presence. Any certificate, attestation, note, entry, endorsement, or instrument made, or signed and sealed by a notary public in the execution of the duties of his or her office is a notarial act.<sup>1</sup>

**Note**

1. *Brooke's Notary*, 12th ed, Sweet & Maxwell, London, 2002, p 65. As to the formalities of notarial acts see *ibid* pp 65-69.

**[250-1760] Proof by notarial act** The production of a notarial act relating to the presentment of a foreign bill of exchange or the execution of a deed taking place in the jurisdiction in which the notary public functions, is not of itself, in a court of justice of that jurisdiction, evidence of the matters set forth in the notarial act.<sup>1</sup> However, if a notary or his or her clerk has died since a bill was presented, entries by the notary or his or her clerk in the notary's book of the presentment and dishonour of a bill are admissible in evidence in an action on the bill, upon proof of his or her death.<sup>2</sup>

Where a notarial act is validly made in a foreign country, it may be received in evidence without further authentication.<sup>3</sup> Judicial notice may be taken even where the form of the notarial act is irregular.<sup>4</sup>

**Notes**

1. *Chesmer v Noyes* (1815) 4 Camp 129; 171 ER 42; *Nye v Macdonald* (1870) LR 3 PC 331 at 343 per Lord Cairns.
2. *Poole v Dicus* (1835) 1 Bing NC 649; 131 ER 1267.
3. *Re Trade Mark of Ryan Lewis & Co Pty Ltd; Ex parte The Autotone Co* (1918) 24 CLR 460; 24 ALR 194 (judicial notice of affidavit made in United States purported to be signed by a notary public of that country, who affixed his signature and official seal); *In the Will of Vickerman* (1895) 21 VLR 236; 1 ALR 21; 17 ALT 34 (authentication of power of attorney by notary public in England sufficient). As to proof of notarial acts by foreign notaries see also *Halsbury's Laws of England*, 4th ed, Vol 33, para 734.
4. *Re Sutherland (dec'd)* [1910] VLR 118; (1910) 16 ALR 63; 31 ALT 150.



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