

The Society of Notaries of Queensland Incorporated

Practice Manual

- Section 1 The history of Notaries - Seminar paper by James Noble.
- Section 2 Notarial practice by Neil McPherson and Don Seawright including
- Applications
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 - Verification and authentication of documents including relevant portions of the Hague Convention 1961.
- Section 3 The Hague Convention - Seminar paper by Gary Bugden (amended Geoff Kelly, September, 2008).
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SECTION 1 **The history of Notaries**

This paper will deal with the origin and development of the Society of Notaries, a comparison with societies in other countries and the present function of Notaries in Australia. I am indebted to Mr Ready, the author of the tenth edition of Brooks Notary in the preparation of this paper. I am deeply indebted to the research done by Mallesons and the assistance given to me Gary Bugden. Gary provided to me research material including articles by various authors. This material is available for anyone to peruse if they should so wish and will form part of the records kept by our Society.

The history of Notaries

I rely extensively on a paper prepared by Jacqueline O'Neal in the preparation of this section of my paper.

The origin of the Notary can be traced back to the ancient Roman Empire. The Roman Notary was a highly educated person in a time when very few people could read and write. He was a public official entrusted with the duty of providing legal assistance, drafting and authenticating documents and keeping the official archives. Parties wanting to formalise a particular undertaking would go to the Notary. Notaries were respected for their knowledge of the law and trusted because of the profession's high ethical standards. The Notary would offer any needed legal assistance. As an impartial public official, he would oversee the transaction to ensure that both parties were equally protected. The Notary would then draft the required document and retain the original document for safekeeping. Notaries provided the officially recognised document authentications and archives for the Roman Empire. The Notary eventually adopted the use of an official seal for attesting documents. The seal has an important place in history. In a period of widespread illiteracy, the use of the seal took the place of the written signature. Documents with more than one page had holes punched and a ribbon was run through the holes to join the pages. The Notary would wax over the knot and impress the wax with the official seal so that pages couldn't be added or deleted. Our definition of the word "seal" is derived from this act. The word means to secure or to enclose.

Seals were used long before the Roman Empire. They pre-dated the invention of writing.

The earliest seals were stamp seals made of stone. A seal in the form of a signet ring became popular in the Greek and Roman periods.

The invention of writing brought with it a way of formalising agreements. It also provided however an opportunity for forgery. The seal was used to show voluntary agreement to a written contract. A document wasn't valid without the seal. To prevent the fraudulent use of the seal, signatures on documents were witnessed. It was just another step to having a witness being a public official.

With the development of the court system during the Roman period, a function was given to the Notaries who became experts in non-litigation transactions. Notaries in fact pre-dated lawyers by many centuries. Roman Notaries had more prestige than the Judges and were amongst the highest paid government officials.

Rome also developed a complex government administration. The Roman Empire encompassed much of Europe, North Africa and South-East Asia. A large bureaucracy developed to administer the government which required a large number of documents and record keeping. Notaries were used in the drafting of various formal government documents and they also served as legal advisors to officials who held high government offices. Many served the Emperor as personal secretaries. They were respected for their knowledge and skill and they were trusted because of the high standards of the office.

The Church also developed its own laws, courts and administrative practices, all of which were modelled after the Roman system. The Church and State formed a close relationship for many centuries. The Church for its administration also relied upon documentation and record keeping. The drafting of these documents required the service of Notaries. Many clergy found it convenient to become Notaries.

With the downfall of the Roman Empire, the Church continued to develop. During the Middle Ages a Notary, whether secular or clergy, was always appointed by the Vatican. The Notaries continued with their role in the Church.

The next important point in history was the Italian Renaissance. There was a resurgence in the Italian cities of interest in literature and culture by way of lay professionals, primarily the teachers, lawyers and the ever-present Notary. Notaries at this time were a combination accountant, solicitor and public recorder. This ushered in a period of growth in literacy and education.

With the development of the European countries during this period, two distinct legal systems developed. The Civil Law system and the Common Law system. Civil Law was based on Roman law. The Common Law system developed in England. In the European Civil Law countries a Notary continued to be, and remains today, an important public official. The Civil Law Notary was a legal specialist who performed many of the same services as a Common Law lawyer, but did not appear in court.

Common Law England never developed the profession of the Notary. As long as England was connected with the Roman Church, the Church courts required the services of Notaries. In the secular world, only documents involving international commerce required the services of a Notary. All other types of important documents such as contracts, land transfers and Wills, did not require a Notary.

In 1534, Henry VIII broke away from the Roman Catholic Church. Without the Church there was no longer a need for Notaries in England. During this period few notarial appointments were made. Henry VIII in fact made any application to the Vatican for a notarial appointment, a criminal offence.

English notarial services were confined to the area of international trade.

English Notaries today are respected legal specialists in the area of international commerce. Their work is internationally accepted.

The modern world was colonised by England, France and Spain. These countries exported their legal system to the new world. The colonies in America and Australia continued the English tradition. During the early period there was very little need for the services of a Notary. However, trade between the colonies and Europe encouraged the development of Notaries. Notaries in the United States were initially appointed by the President. In Australia they were appointed by the Archbishop of Canterbury and these appointments still continue. Over a period of time in the United States, the appointments of Notaries were then made by the States and not the President. The function of the United States' Common Law Notary has become ministerial rather than judicial, with very few powers.

The southern States in America were colonised by France and Spain and have a French and Spanish heritage. France and Spain are Civil Law countries. In the southern States in America they retain the Civil Law. The other American States have retained the English Common Law. The role of Notaries in the southern States

evolved differently to those in the Common Law States. The Notaries in the southern States in America have more power and authority than Notaries in the Common Law States. These Notaries engage in activities which would be considered as the practice of law in the other States.

The Notaries in the early period of the southern States were commissioned by the kings of France and Spain. Some Notaries served under both. Notaries were required to draft documents and to maintain official bound records. Archives were passed down from Notary to Notary until after the civil war in America when a central office for notarial records was established.

The Notaries in the southern States of America are required to take examinations. The Notaries in the northern States do not have this requirement. The Notaries in the southern States are held to have high standards.

The Hague Convention of 1961 abolished the requirement of legalisation for foreign public documents among countries who were signatories to the Convention. Australia has become a signatory to the Convention. Gary Bugden will be delivering a paper in relation to the Convention and its effect on our notarial functions.'

Development of the Notarial profession in England and then subsequently Australia

I rely heavily on the current edition of Brooks Notary in regard to this section of the paper.

Four phases can be distinguished in the establishment of the English Notariat.

The first period is prior to 1279 which saw the introduction of Notaries into England. The period up to 1279 saw the sporadic arrival in England of foreign Notaries, chiefly Italian, appointed by Imperial or Papal authority. In 1279 the Archbishop of Canterbury was first authorised by the Pope to appoint Notaries.

There is scant evidence of notarial activity in England prior to the 13th century. The growth of notarial activity in England occurred towards the end of the 13th century. Papal and Imperial Notaries were employed by Englishmen engaged in litigation before the Roman Curia and as the Notary became a more familiar figure in England, his services came to be used in matters unrelated to the ecclesiastical courts.

The second period was between 1279 and 1533. This period witnessed the development of a truly English Notariat. In 1279, Pope Nicholas III granted to John Peckham, the Archbishop of Canterbury, the faculty of appointing three Notaries within a year. For the purpose of training English clerks in notarial skills, the Archbishop brought to England an Italian Notary by the name of John of Bononia. From this time the employment of Notaries in Canterbury and other dioceses became common. At this stage the appointment of Notaries was not exclusive to the Archbishop of Canterbury. The Bishop of Winchester, for example, also had a similar faculty.

In the reign of Edward II, as a result of a controversy between the king and the papacy, foreign Notaries appointed by Imperial authority were forbidden to practice in England. In 1320, a writ was issued directing the Archbishop of Canterbury to admit no Imperial Notary to appear in any cause before him. On the same day, the King issued a general proclamation against such Notaries and their instruments. The prohibition however did not seem to affect Notaries appointed pursuant to the delegation of the Pope.

Notaries never attained such a high position in England as they did on the continent. However they became increasingly important figures in England during this period in the ecclesiastical and secular spheres. As Notaries were not in the ranks of the clergy, they were under their guidance or control, wearing the ecclesiastical habit and enjoying the privileges and immunities of the order of which they were allied. Notaries were active in the preparation of documents for use in proceedings before the ecclesiastical courts and documents relating to ecclesiastical affairs.

In civil matters, Notaries were employed by the monarch and the government to exemplify documents, draft treaties and record legal proceedings and were particularly active in matters between the Church and State. The courts of common law however refused to attach any weight to notarial instruments and did not treat them as valid evidence. Notaries were employed by private individuals in secular matters, particularly where documents had to be prepared and where those documents were to take effect in overseas jurisdictions. In the domestic sphere, they acted as conveyancers and were employed in attesting the execution of Wills, deeds, contracts and other documents.

The third period was between 1533 and 1801. The reformation period did not produce any changes in the functions of Notaries in England. A Court of Faculties was called into existence which was attached to the Archbishop of Canterbury and to this court the appointment of Notaries was, and still is, assigned.

During the 17th century, the activities of Notaries moved increasingly away from the business of conveyancing and the preparation of deeds and contracts. They became increasingly involved in preparing and authenticating instruments connected with international commerce, for example insurance policies, charter parties and bills of lading. The larger part of the conveyancing business was undertaken by attorneys at law.

The fourth period, 1801 to the present, was the passing by Parliament of the Public Notaries Act 1801. In England the notarial professional began to evolve into its present form. Notaries tended to concentrate their activities almost exclusively on the preparation and authentication of instruments to be used abroad.

The present functions, powers and qualifications of Notaries

The official title of an English Notary is a Notary Public. The functions of a Notary as a whole are not defined by any statute or other instrument. There has never been any attempt to codify the precise nature of the Notary's duties as has been done in the countries of continental Europe, Latin America and other parts of the world whose legal systems are based on principles derived from Roman law.

The functions of a Notary for our purposes derived chiefly from custom, to a limited extent from case law, and also certain statutes which contain provisions relating to specific duties of a Notary.

Because the role of Notaries has not been strictly defined, it is difficult to furnish a succinct definition of the Notary's role in the English legal system.

Generally speaking, a Notary Public in England and therefore Australia, may be described as an officer of the law appointed by the Court of Faculties whose public office and duty is to draw, attest or certify under his official seal, for use anywhere in the world, deeds and other documents, including Wills or other testamentary documents, conveyance of real and personal property and Powers of Attorney; to authenticate such documents under his signature and official seal in such a manner as to render them acceptable as proof

of the matters attested by him, to the judicial or other public authorities in the country where they are to be used, whether by means of issuing a notarial certificate as to the due execution of such documents or by drawing them in the form of public instruments; to keep a protocol containing originals of all instruments which he makes in the public form and to issue authentic copies of such instruments; to administer oaths and declarations for use in proceedings in Australia and elsewhere; to note or certify transactions relating to negotiable instruments; to draw up protests or other formal papers relating to occurrences on the voyages of ships and their navigation as well as the carriage of cargo in ships.

The functions of Notaries are set out in some detail in Chapter 2 of Brooks Notary. It is interesting to note the qualifications and duties of a London Notary which is far more extensive than our position in Australia or elsewhere in England. A London Notary must not only be proficient in one or two foreign languages, but he must be familiar with the principles and practice of foreign law. He is required to prepare important documents such as contracts, mortgages etc which are intended to be used abroad. London Notaries are often called upon to incorporate limited companies on behalf of their clients in overseas jurisdictions. Some Notaries specialise in the conveyancing of properties overseas on behalf of a seller or purchaser in England. By virtue of their training in foreign law and languages and the familiarity acquired through practical experience of procedures in countries overseas, the London Notary is well qualified to handle legal matters spanning various jurisdictions.

The nature of notarial work is non-discretionary. By taking the declaration of office, a Notary declares that he will, "faithfully make all contracts or instruments for or between any party or parties requiring the same." This formula would appear to allow for no discretion. The only legitimate grounds for refusing the services of a Notary are physical or legal hindrance, incapacity of the parties, impossibility of identifying the parties or illegality of the act.

A Notary has a duty not to act where he has an interest. A Notary cannot make an instrument that concerns his own act and deed since the object of his business ought to be the act and deed of some person who applies to him.

The notarial powers cannot be delegated, even to another Notary.

In the performance of the business entrusted to him, a Notary Public undertakes to use a reasonable amount of skill and ordinary care and diligence. In other words, a Notary must exercise the skill and care that may reasonably be required of a skilful and careful person in similar circumstances. For example, a Notary should take great care in verifying the identity and capacity of persons requiring him to issue certificates or instruments for their use or benefit. According to Brookes Notary, he should also carefully keep in his protocol, all acts deposited with him and one original of all instruments made by him in public form and, when requested, he should deliver copies of exemplification of these acts and instruments to persons entitled to receive them. The Notary must keep a register of all acts which he makes in the private form. It will be interesting to note how notaries carry out this practice.

In addition, a Notary should carry out his client's instructions, explain to the client his position, rights and liabilities, and see that every precaution is taken to protect those interests.

A Notary is answerable only to his client. His duties arise solely out of contract. The question whether a Notary may be liable to third parties for the tort of negligence has never been the subject of a court decision as far as I am aware. However, Notaries should bear in mind that the position of Notary does not preclude Notaries from being liable in negligence to persons other than their clients.

The comparison of our faculty with Notaries in other countries

During the course of this paper, I have briefly referred to differences between our notarial functions and those practised in America and on the continent.

Civil Law jurisdictions the “Latin” Notaries

A very comprehensive paper has been prepared by Pedro Malavat, the Assistant Professor of Law, University of Florida, which deals with this area. A copy of the paper is available for inspection if anyone is interested. Notaries practising in civil law jurisdictions broadly comprising the countries of western continental Europe (excluding Scandinavia), Central and South America, occupy a position very different from that of the English and Australian Notary. Commonly termed “Latin” Notaries to distinguish them from their Anglo-Saxon counterparts, they may be described as public officers whose principal duty is to make public instruments, legally valid in point of form and substance, which record juridical acts, e.g. the transfer of immovable and moveable property, donations and Wills. Indeed few legal transactions can be validly effected in the countries concerned without the Notary’s intervention. He also advises the parties as to the most appropriate and economical means of achieving the legal effect they desire and adjust their wishes to the requirements of the law. These instruments are received in all courts of law as proof of the statements of the parties recorded in them and of the acts which the Notary attests to have taken place in his presence or to have been done by him; the original instruments are preserved by the Notary in his archive or protocol out of which he issues copies, extracts or certificates to persons requiring them. Although appointed by the State and exercising functions delegated to him by the State, the Latin Notary is not in any sense a civil servant, but rather a member of a liberal profession. Entry to the profession is restricted to graduates in law. After obtaining his degree, the prospective Notary must undergo a period of practical experience in a Notary’s office and sit special notarial examinations. The number of notarial positions is extremely limited. The mere passing of an examination does not guarantee an appointment. Vacant posts are allocated to candidates achieving the highest results in examination or on the basis of a further competitive examination.

United States of America

Notaries Public in the United States do not need to be qualified lawyers and have limited functions relating chiefly to the administration of oaths, the taking of acknowledgment of deeds and the protesting of negotiable instruments. I have noted earlier that the functions of Notaries in the southern States are more extensive to that of the northern States because of their origin from France and Spain.

Notary Publics are appointed in the individual States. In most cases the only requirements for appointment are residency in the State concerned, the obtaining of the age of majority and the furnishing of a bond although in some southern States a written examination is required. They have a defined local jurisdiction, generally restricted to the County or District in which they reside but in some cases they may be appointed Notaries for the State at large. Their appointments are for a limited period, generally four years or less. It is interesting to note that there are 4.2 million Notaries in the United States.

China

There are Notaries in China something which I did not know before. Although America may have 4.2 million Notaries, there are only 6,000 Notaries in China, a country which has a population of over 1 billion

people. Again I thank Mallesons Research Department for providing an article to me setting out this information in relation to Notaries.

The paper given to me was prepared by Tung-Pi Chen who is the Professor of Law, Queens University, Kingston, Canada. From this paper I have been able to glean that in the traditional Chinese legal system, the Notary did not exist. The first statute on the Office of Notary was introduced by the Government in 1935. The Communist Government of China adopted the common program in 1949. It abolished the former Notarial system and established its own Notarial institution.

What has enhanced the willingness of the Government to expand and perfect its Notarial system has been the belief of the post Mao leadership that only with a formalised legal infer-structure can the Government create an essential environment for achieving the mandate of the “four modernisations”. Under China’s current legislation, an unusually important role has been assigned to the Notarial institution.

Firstly, the Notariat in China has been used as an instrument of judicial control over the locality and practicality of economic contracts in order to ensure their implementation. As the economic contract system has currently become the central means of fulfilling state plans and has indeed become an effective instrument of the state in planning economic activities, the Notariat in China is thus playing a pivotal role in maintaining and consolidating China’s socialist economic order.

Secondly, China’s new-door external policy and increasing external economic activities have both served to enhance the role of Notariat. The steady expansion of China’s external economic activities has called for the greater use of Notarial work to promote certainty and reduce the likelihood of breach, in order to inspire the confidence of foreign investors.

Thirdly, China’s current legal structure remains under developed and incomplete. It has neither civil, corporate, commercial codes nor personal laws such as those of the western world. The Notary plays a critical stop-gap function at this time in China’s legal history. Notaries provide a vital link in efforts to perfect the country’s socialist legal system. They in effect fill out areas of legal relations yet to be established by statute.

They also provide legal protection of personal security and individual rights and promote order and unity in society. Through the exercise of their functions, Chinese Notaries have the potential to supply an efficient and economical means of preventing disputes and avoiding litigation, thereby protecting China’s production process from wasteful interruption.

As the Notaries live and work among the people of China they perform an educative function through their Notarial activities by persuading the public to obey the law and to observe socialist legality as called upon by legislation.

Notaries must qualify under one of the following categories:

- (a) They must be University Law graduates with more than 1 year’s experience in judicial work;
- (b) Judges or other officials who have served in the people’s Courts;
- (c) Persons who possess legal knowledge equivalent to that of a vocational secondary law graduate and who have engaged in legal work for more than 2 years;
- (d) Persons who have served as assistant Notaries for more than 2 years.

Notaries are mostly drawn from the latter two categories.

The paper goes on in some detail about the functions that they perform which are wide ranging. They carry out the policy functions of the Government and are involved in the legal system which is developing in China.

As stated, I am deeply indebted to the research carried out by Mallesons Stephens Jaques and to the tenth edition of *Brookes Notary*. The papers obtained by Gary Bugden will be kept in our records and are available for inspection at any time.

I have found researching the material in regard to Notaries very interesting. It is a very old profession and held in high esteem in many countries throughout the world. May I say a very noble profession. The duties we perform as Notaries are duties which should not be taken lightly. They carry a great deal of care and responsibility and I believe everyone should be aware of this when performing their notarial functions.

I hope this has been of some interest to you.

Jim Noble

SECTION 2 Notarial Practice

Note:

- 'Society' means The Society of Notaries of Queensland Incorporated
- The history set out below is in addition to the paper presented by Jim Noble and has been included, as the Editors are of the view that it contains supplementary information that will be of interest to Notaries.

1. History

General

The office of a Notary is one of great antiquity probably having its origin in the civil institutions of ancient Rome. The office developed from the activities of scribes until Notaries became independent officers, whose certificate and seal are awarded recognition as a public act in the same way as a document under the seal of a Court.

With the decline of the Roman Empire, the Emperor of the Holy Roman Empire as successor to the Roman Emperors assumed the power to appoint Notaries. The Pope also assumed this power at the later date. Towards the end of the eleventh century the Popes, who until then had exercised the prerogative of notarial appointments exclusively within their own territories, assumed the right to appoint Notaries to act outside the Papal States.

In England, Notaries were originally officers of the civil and canon law and acted under Imperial and Papal appointment. The Archbishop of Canterbury generally made papal appointments by delegation from the Pope. This delegation was not exclusive because it appears delegation was granted to others such as the Bishop of Winchester and the Chancellor of the University of Oxford. In the reign of Henry VIII however, the power to grant faculties was assumed by the King, and a Court of Faculties under the jurisdiction of the Archbishop of Canterbury was called into existence. This was done by the passing of the *Ecclesiastical Licences Act 1533* (also called Peter's Pence Act of 1533) (the Act concerning paterpence and dispensations). That Act commences with a lengthy recital in which complaint is made that the subjects of the King had been greatly impoverished by reason of the "intolerable exactions of great sums of money" taken out of the realm by the Pope and the See of Rome for dispensations, faculties, and licences. Since the passing of that Act, all faculties appointing Notaries in England have been issued by the Archbishop of Canterbury whose chief officer is known as the Master of the Faculties.

General Notary

A General Notary is one holding a faculty to practise in all places in England and Wales, including an area under the jurisdiction of the ancient Company of Scriveners of the City of London, or entitling him to practice in all places in England and Wales outside that area. It would appear that to practise within the City of London or within the circuit of ten miles of the Royal Exchange the applicant must have served seven years apprenticeship with a Notary. If the applicant desires to practise in the City itself, or within three miles of the City of Westminster or Southwark, he must also be a member of the Scriveners Company, or to give it its full title, "The Masters and Wardens and Assistants of the Society of Scriveners in the City of London".

District Notary

A District Notary is appointed to act only in a particular district, the Master of the Faculties upon making the appointment settles the area and extent of which. Queensland is divided into the three Supreme Court Districts and formerly a faculty was granted in respect of the particular Supreme Court District set out in the faculty. This is no longer the case.

Connection between Notaries and Scriveners

The connection between the Notaries and the Scriveners dates from the fourteenth century. Up to the year 1760, when the right of London Solicitors to practise conveyancing was established, Notaries as members of the Company of Scriveners enjoyed, within the City of London and a circuit of three miles, a monopoly of the "art and mystery" of preparing all deeds, charters, and other writings, which by the common law or custom of the realm required to be confirmed or attested by a seal.

Appointment of Notaries

In England, a person cannot be admitted to the roll of Notaries unless he either has served an apprenticeship to a Notary, or is a solicitor; but in the Dominions and Crown Colonies no such qualification was required, and appointments were made entirely at the discretion of the Master of the Faculties under the Act of Henry VIII (cit. sup.). The Master of the Faculties could at his discretion appoint a person who was not legally qualified. See the decisions of the High Court of England Probate Division *Baillieu v Victorian Society of Notaries 1904 P p.180*, and *Fay v Victorian Society of Notaries 1909 P p.15*. There are certain statutes in England relating to English Notaries, but presumably they do not apply to Notaries outside England and Wales. Apart from Statute, the Court of Faculties had inherent jurisdiction to strike off a Notary for misconduct, whether that misconduct is referable to his office of Notary Public or not (*Re Champion (1906) P p.86*).

Australian Consular Officers

Under the English *Commissioner of Oaths Act 1889*, every British Ambassador and various other representatives abroad may exercise the functions of a Notary Public, and their respective signatures and seals are admitted in evidence without proof that the seal or signature is the seal or signature of the person signing same and without proof of his official character (see s6).

In Queensland under *The Australian Consular Officers' Notarial Powers and Evidence Acts 1946 to 1963*, Australian Consular Officers abroad are empowered to perform notarial acts. The list of the Officers so authorised is set out in s2 of the Act. Under s4 such officers may do things required to be done by British Consular Officers, and by s3 (3) the signature and seal of such officers are admitted in evidence in Queensland without proof of the signature or seal, or of the official character of the person signing.

Qualification

Under the order of the Master of Faculties an Applicant for a faculty in Queensland is required to notify the Society which may lodge a Caveat. It is usual for an applicant before making formal application to the Master to enquire whether or not the Society will consent to his application.

When making an application to the Society, the following details should be furnished:

1. The full name of the applicant (one only per firm).
2. The age of the applicant.
3. Details of the applicant with regard to Articles, date of admission in Queensland as a solicitor (and if the applicant was previously admitted in another State, the date of that admission).
4. The full name of the firm of which the applicant is a member, and the date he became a member of that firm.
5. The areas of practice, both professional and geographical, in which the applicant and the firm of which he is a member practises (e.g. in the general legal field, criminal law field, commercial law field, etc).
6. The public need for a Notary Public in the area or areas where the applicant lives and/or practises. A public need means, so far as the Society of Notaries is concerned, a need within the area for a Notary Public to witness documents in that capacity and to carry out other notarial functions such as the correctness of copies etc.

The Society of Notaries requires a certificate to be furnished from the Queensland Law Society (or the Law Society for each State where the applicant has previously practised) as to the applicant's standing in the eyes of the Society. A letter should be enclosed with the application signed by the applicant and addressed to the Queensland Law Society (or other relevant Law Society) seeking that certificate.

An applicant is also required to submit with his application the names of at least two (2) solicitors of not less than ten years standing and not related to or in practice with the applicant, as referees and give written authority to the Council of this Society to refer to those referees.

In the absence of special circumstances, the qualification for a Notary In Queensland laid down by the Society is that he shall be a Solicitor of the Supreme Court of Queensland of ten years standing. The Master of the Faculties may, however, exercise his discretion and override the view of the Society.

The approved number of Notaries for any centre is decided by the Society from time to time in accordance with prevailing circumstances. Where the appointment of a Notary is approved for any centre the Society will ordinarily approve of the appointment of a second qualified person as a Notary in the centre. It is a matter of practice that the Society does not, in the absence of special circumstances, approve of the appointment of two members of a firm to hold faculties as Notaries Public at the same time.

Documents

There are a number of documents usually lodged in support of an application for appointment of a Notary by the Court of Faculties. They are as follows:

1. A memorial setting out your qualification, general legal background, the type of legal firm or area of practice and your case for the granting of a Notarial Faculty.
2. The references of two practising Notaries.
3. References of about 20 local persons, particularly business or professional people to whom you are personally known. The references may be on one sheet or divided among a number of sheets.
4. A certificate from the Chief Justice of Queensland confirming that the applicant is a solicitor practising in Queensland is of known probity and is fitly qualified for appointment.

5. A certificate from the Registrar of the Supreme Court of Queensland confirming that the applicant has been admitted to practice, remains on the roll, that no complaints have been lodged in the court against him and that he has not been suspended.
6. A certificate from the Society of Notaries of Queensland confirming that the application is recommended by the Society.

It is suggested that you prepare your documents and obtain the necessary certificates and references and send copies of all documents to the Secretary of the Society for perusal before sending anything to London. The secretary has some knowledge of the Master's requirements and can confirm whether your documents appear to comply. Of course, comments from the Secretary are hopefully of assistance but final acceptance of the documents is a matter for the Master.

If your documents appear to the Secretary to comply, you will be advised accordingly and the Society's certificate will be sent to you. After the Hon. Secretary has checked through the applicant's memorial, references and certificates from the Chief Justice and the Registrar of the Supreme Court, the Hon. Secretary provides the applicant with a letter from the Society addressed to the Master of Faculties confirming that the Society has consented to the application. The applicant then sends the originals of all documents direct to the:

The Registrar
Faculty Office of the Archbishop of Canterbury
1 The Sanctuary
Westminster, SW1P 3JT
London, United Kingdom.

A remittance (at September, 2008) of £460 pounds sterling made payable to The Faculty Office must accompany your application.

Should you be awarded a Faculty, you will be advised by the Court of Faculties and the Faculty itself will be forwarded to you and you will be required to swear an oath before the Archbishop's delegate who is usually an Anglican Bishop or a Judge of the Supreme Court or the District Court. After the oath is taken, the document accompanying the Faculty is returned by you to the Faculty Office in London where your appointment is recorded.

When you have taken the oath, you should then write to the Secretary of the Society and advise him of the date of swearing the oath and the name of the person before whom the oath was sworn. These details are then recorded in the Register of Notaries for Queensland kept by the Society.

It is desirable for all Notaries who practise in Queensland to become members of the Society of Notaries of Queensland. You may apply to the Secretary for membership once you have been sworn and your application will then be referred to the Council.

Fees to be charged by Notaries: The scale of fees referred to in Section 7 of this Manual is indicative only.

2. General Functions of a Notary

Generally

A Notary, or Notary Public, is an officer of the law. His functions are not defined by any English Statute or published rule; but speaking generally, it is his business to draw up and authenticate documents of a quasi-public character requiring unusual solemnity, and to give a certificate of the due execution of such documents, authenticated by his signature and seal. He is principally employed in mercantile affairs, such as to make protests of bills of exchange; and he is invested with an official and international character that is recognised by the laws of all civilised nations.

The public nature of the office of a notary is referred to in the decision of Powell J in the matter of the *Public Notaries Act 1985 (NSW) Applications of Fitzpatrick and Partington (1989) 18 NSWLR 11*.

A Notary in the State of Queensland is not *as such* authorised or entitled to draw up any document for reward or to do work normally performed by a solicitor.

Agency

No agency allowance should be given from one notary to another or to any other person.

Notarial Seal

It is necessary for the proper performance of the duties of a Notary Public that he should have an official seal, as it is used as one of the steps in performing the notarial act. A 'notarial act' is the act of a Notary Public authenticated by his signature and official seal, certifying the due execution in his presence of a deed, contract, or other writing, or verifying some fact or thing done in his presence. Thus, 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 office, is a notarial act.

There is no prescribed form of the type, size or nature of an official seal. As such importance is attached to the signature and seal of a Notary Public throughout the world and in all Courts, it is desirable that the seal should be of such type and design that, if necessary, the Notary would be able to check its authenticity as a guard against forgery. The Hon. Secretary will advise of the names of manufacturers of seals and seal presses, but one such manufacturer of a quality product is Myers Badges & Dies of Brisbane.

It is therefore recommended that the seal should be an impressed type and contains the Notary's name in full, the City or place, and the words "Notary Public", and it is recommended that it should also contain some distinctive design or mark, for it is believed that an engraver could detect any attempt to imitate a design.

Upon appointment, a specimen of the seal and signature of a Notary is forwarded by the Notary to the Court of Faculties as well as the two copies to the Hon. Secretary. The seal should be kept under lock and key when not in use and it is recommended that a locking device be attached to the press. The Secretary enters a specimen of your signature and seal in the Society's records and forwards the other to the Department of Foreign Affairs and Trade.

In addition to the seal, it is recommended that each Notary have made two rubber stamps showing in a small but legible typeface (e.g. 10 point Arial):

1. Full name of Notary
Notary Public
Address of Notary
Queensland Australia

A second stamp, as above, but with the additional words:

2. Full name of Notary
Notary Public
Address of Notary
Queensland Australia
My commission does not expire (*alternatively*, is not limited by time)

Most documents have provision for, and often require, that these details are inserted and such stamps will assist the legible insertion of it.

The second stamp is required for use where the documents are to be used in the United States, its dependencies and some countries which have adopted U.S. practices (e.g. Philippines). In the United States, there appears to have been something of a role reversal – Notaries are very common and Justices of the Peace are very rare. Each American State Governor appoints Notaries for a term of years coinciding with the term of the Governor. American Notaries do not appear to use metal impressing seals of the type discussed above but only have a rubber stamp that concludes with the words “My commission expires on the 31st December, 2008” – these words often appear in printed American forms. It also appears to be the practice of American Notaries to either not charge for their services or to charge only a nominal amount (about \$5.00) for witnessing documents. It can often be advantageous for the Notary or his Secretary to briefly inform any American of these differences at the time of making the appointment.

Use of Seal

If a document or a number of documents are to be sewn together for identification purposes, the tape or cotton should be placed under the wafer seal and the impressed seal should then be affixed.

Notarial Register

A Notary should keep a notarial register to record all transactions in which he has acted as a Notary, as entries in such register may be produced in evidence, upon proof of his death, as a valuable record, should any enquiry be made as to the authenticity of any notarial act.

Generally, the Register should contain at least a record of the nature of the document, its purpose and date, and the names and addresses of the parties, and the act performed by the Notary. Like the Seal, the Notarial Register should be kept under lock and key when not in use. Many Notaries photocopy the documents after they have been executed and witnessed and, most importantly, the documents of identity and keep those photocopies as the Notarial Register. Identity documents should contain a photograph and a specimen signature e.g. passports.

It is not necessary to photocopy each and every page of lengthy documents such as an affidavit with exhibits but certainly the first page and each page where signatures appear. In many countries, the *form* of the document is as important as the *content*, especially in the case of Powers of Attorney. A Power of Attorney prepared on a standard Queensland form will often cause difficulties overseas. As much as possible, a Notary should request the client to have the document prepared overseas and then sent here for execution. Whilst this course may seem to an anxious client to be the long way around, in practice it has often proven to be the shorter and more effective course.

All entries in the notarial register should have an identifying number. There is no specific requirement as to how this may be done, some of the ways are:

- Numerically, commencing from one;
- By year e.g. 1/2008, 2/2009, etc.
- By notarial register volume e.g. Register 1 number 1, Register 1 number 2, etc.
- The Council of the Society has determined that a Notary's Register should be kept indefinitely. When a Notary retires from practice as a solicitor, it is frequently the case that his records will not be retained by his firm due to space considerations. The Council feels however that these records should be kept by the Notary for at least 10 years if this is possible.

3. Verification and Authentication of Documents

Notarial Acts

As Courts of Law give great weight to notarial acts, there is cast upon the Notary a very heavy onus of care to verify or satisfy himself that any notarial act is in order. The essential parts according to Brooke's Notary are as follows:

"First, the title, the date and place of execution, the names of the notary, parties and witnesses, and a statement of the fact of the parties appearing before the notary and of their reason for doing so; second, the document or transaction which is the subject of the act; third, a statement to the effect that the instrument was read to the parties and approved by them; fourth, the signatures of the parties and witnesses; and fifth, the signature and seal of the Notary himself. The date is necessary and should be written in full. There must be no erasure or correction. The place where the instrument is executed is absolutely essential. It fixes the reality of the transaction and the legality of the act of the notary, proving that he acted within the limits of his jurisdiction. The words 'Before me' should never be omitted. The name of the Notary, and the fact that he is duly authorised, admitted, and sworn, should always be inserted, and under the signatures of the witnesses the full name and address of each should be given. There must be no doubt as to the identity of the parties; for this reason their profession, occupation or trade should be added. In short, every notarial instrument or act should narrate fully and accurately the whole procedure of which it is intended to preserve a record and afford the proof.

If the notarial act is written on several sheets of paper, each sheet does not require the initials of the notary".

Without derogating from the above, there appears to be some differences in current practice. For example the date is rarely written out in full i.e. "thirty-first day of December One thousand nine hundred and ninety eight". A Notary should be careful that there is no ambiguity in the date. We use the convention of dd/mm/yy others use mm/dd/yy which can cause great confusion. It is recommended that at least the month be written i.e. "31 December 2008".

The words "Signed in my presence" can often be more appropriate than "Before me".

If there are corrections or alterations required, each party, the witnesses and the Notary should initial them.

In a multi-page document, it can be advantageous for the Notary to impress his seal (without a wafer) on each of the other pages especially where the document is not securely bound. A Notary may be specifically requested to not bind a document where it is initially being transmitted by facsimile. The Notary should retain a photocopy of *all* pages in these circumstances.

Most documents do not have sufficient available space to include all of the matters above, hence the recommendation to use a rubber stamp. If, however, a separate certificate is being attached to a document, it is recommended that each Notary have a precedent document available which contains a 'full narration'.

Identification of Parties

The identification of parties is not always a simple matter, and a Notary should never give a certificate that *a party is personally known to him* unless he has strong grounds for reaching that conclusion.

In the case of Powers of Attorney and like documents, he can frequently overcome his difficulty by having the documents witnessed by a person (or persons) known to him, who knows the party, and by taking a declaration from the witness setting out that he knows the party and that the witness is personally known to the Notary.

Where this is not possible, he can sometimes obtain identification documents and give a certificate to this effect - for example, passports, Aliens Registration Certificates, driving licences, bank passbooks - or he may be able to obtain an accumulation of documents which satisfies him beyond a reasonable doubt that the person is the party he is endeavouring to identify.

The Council has expressed the opinion that a Notary attesting a signature to a document need not endorse on such document the evidence on which he has satisfied himself of the identity of the person signing the same, but the Notary should place on record in his register a memorandum referring to the evidence on which he established the identity of the person signing the document.

The recommendation is the keeping of photocopies of the documents of identification but that *if there is any doubt as to identity, refuse all requests.*

Epecially note Please refer to the Department of Foreign Affairs and Trade (DFAT) for the current practice.

Legalisation of Notary's Signature and Seal

A British Notary's signature and seal with or without a certificate will be accepted in the United Kingdom and in all British dominions without further verification. The same applies to the signature and seal of Queensland Notaries. However, in foreign countries the practice of that country must be ascertained by the Notary in order to complete the authentication of the document i.e. the practice of having the Notary's signature 'legalised'.

On 16 March 1995, Australia became a contracting State to the Hague Convention of 5 October 1961. Public documents within the Convention to be used in other Convention Countries, which are now subject to legalisation, should no longer be legalised after 16 March 1995.

The documents covered by the Convention are set out in Article 1 of the Convention. Instead of legalisation, a certificate should be obtained under the Convention, and the Department of Foreign Affairs and Trade currently provide these. The relevant Articles of the Convention, a specimen Apostille, and the list of Convention Countries applicable as at 11 January 1995, are reproduced under the section Authentication and Transmission of Documents for use in Overseas Countries.

Where a document is to be used in a foreign country that is not a Convention country, the Consul or Consular Agent should be consulted as to the requirements of the particular country (see *Brooke's Notary* under the heading "Execution and Proof of Documents for Use Outside the United Kingdom").

A Notary's signature may be legalised:

- (a) By the Consular or other authorised representative of the country concerned;
- (b) Where there is no Consular or other authorised representative, by the Department of Foreign Affairs and Trade, Commonwealth Centre, 295 Ann Street, Brisbane;
- (c) By the Department of Foreign Affairs and Trade if this a requirement in the country in which the document is to be used;
- (d) In many cases, by the Hon. Secretary of the Society.

It is recommended that each Notary write to the Consulates for each non-Convention Country and forward a (reduced) photocopy of his appointment and a specimen of his signature and seal. This is particularly advisable where the notary has a number of clients of the same foreign nationality who may require notarial services. Consular appointments and Diplomatic Missions are detailed in publications available for purchase from the Australian Government Publishing Service.

Documents in a foreign language: The Council of the Society believes that it within the Notary's discretion to decide when he should or should not require an English translation of a document produced to him for a notarial act, but that it is not his duty to call for such translation in every case. If he is in doubt as to what his signature may imply, he may choose to set out in a memorandum at the foot of the document that it is signed in his presence and he is not responsible for its contents which are in a language in which he is unlearned.

Acknowledgements

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Neil McPherson and Don Seawright

Authentication and Transmission of Documents Executed in Queensland for Use in Overseas Countries

1. Authentication of documents for use in Countries which have diplomatic or consular representation in Australia

- (a) The applicant should enquire from the diplomatic or consular representative as to his requirements.
- (b) Usually these requirements will include: -
 - (i) execution of the document before a notary who should attach or endorse his certificate regarding due execution.
 - (ii) certification of the signature and seal of the notary by the Prothonotary of the Supreme Court;
 - (iii) authentication of the documents by the diplomatic or consular representative after payment to him of appropriate fees; and
 - (iv) transmission by the originator of the document to the country where it is to be used.

2. Authentication of documents for use in countries which have no diplomatic or consular representation in Australia.

- (a) The document, which is usually in the English language, is attested by a notary who should attach or endorse, his certificate regarding due execution. Documents in other languages such as printed powers of attorney in Greek for use in Cyprus, are still attested in English in the same way.
- (b) The signature and seal of the notary is then verified by the Department of Foreign Affairs, Brisbane and the document is then forwarded to the Department of Foreign Affairs, Canberra, where the certification by that office will in turn be certified by an officer of that department. The document is then normally returned to the originator by registered post.

3. Specimen signatures and seals

It will be realised that specimen signatures and seals need to be held in the office of the Department of Foreign Affairs, Brisbane.

4. Hague Convention 1961

Convention abolishing the requirement of legalisation for foreign public documents

Article 1

The present Convention shall apply to public documents which have been executed in the territory of one contracting State and which have to be produced in the territory of another contracting State.

For the purposes of the present Convention, the following are deemed to be public documents:

- (a) documents emanating from an authority or an official connected with the courts or tribunals of the State, including those emanating from the public prosecutor, a clerk of a court, or a process-server ("Huissier de justice");
- (b) administrative documents;
- (c) notarial acts;
- (d) official certificates which are placed on documents signed by persons in their private capacity, such as official certificates recording the registration of a document or the fact that it was in existence on a certain date and official and notarial authentications of signatures.

However, the present Convention shall not apply:

- (a) to documents executed by diplomatic or consular agents;
- (b) to administrative documents dealing directly with commercial or customs operations.

Article 2

Each contracting State shall exempt from legalisation documents to which the present Convention applies and which have to be produced in its territory. For the purposes of the present Convention, legalisation means only the formality by which the diplomatic or consular agents of the country in which the document has to be produced certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears.

Article 3

The only formality that may be required in order to certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears, is the addition of the certificate described in Article 4, issued by the competent authority of the State from which the document emanates.

However, the formality mentioned in the preceding paragraph cannot be required when either the laws, regulations, or practice in force in the State where the document is produced or an agreement between two or more contracting States have abolished or simplified it, or exempt the document itself from legalisation.

Article 4

The certificate referred to in the first paragraph of Article 3 shall be placed on the document itself or on an "allonge"; it shall be in the form of a model annexed to the present Convention.

It may, however, be drawn up in the official language of the authority which issues it. The standard terms appearing therein may be in a second language also. The title Apostille (Convention de La Haye de 5 octobre 1961) shall be in the French language.

Article 5

The certificate shall be issued at the request of the person who has signed the document or of any bearer.

When properly filled in, it will certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which the document bears.

The signature, seal and stamp on the certificate are exempt from all certification.

...

Article 8

When a treaty, convention, or agreement between two or more contracting States contains provisions which subject the certification of a signature, seal or stamp to certain formalities, the present Convention will only override such provisions if those formalities are more rigorous than the formality referred to in Articles 3 and 4.

...

Article 13

Any State may, at the time of signature, ratification or accession, declare that the present Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned.

At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.

When the declaration of extension is made by a State which has signed and ratified, the Convention shall enter into force for the territories concerned in accordance with Article 11. When the declaration of extension is made by a State which has acceded, the Convention shall enter into force for the territories concerned in accordance with Article 12.

Article 14

The present Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 11, even for States which have ratified it or acceded to it subsequently.

If there has been no denunciation, the Convention shall be renewed tacitly every five years.

Any denunciation shall be notified to the Minister of Foreign Affairs of the Netherlands at least six months before the end of the five-year period.

It may be limited to certain of the territories to which the Convention applies.

The denunciation will only have effect as regards the State which has notified it.

The Convention shall remain in force for the other contracting States.

Specimen only

APOSTILLE			
(Convention de La Haye de 5 octobre 1961)			
1 . Country: Australia			
This public document			
2. has been signed by			
3. acting in the capacity of			
4. bears the seal/stamp of			
.....			
.....			
Certified			
5. at	6.the	day of	one thousand nine
hundred and ninety-five			
7. by			
8. No			
9. Seal/Stamp:		10. Signature	
.....		

(For a list of participants – see Section 3 below)

**Convention Abolishing the Requirement of Legalisation for Foreign Public Documents
(The Hague, 5 October 1961)**

Known as Hague XII

Entry into force generally, 24 January 1965.

SECTION 3 The Hague Convention

(Note: The following is a paper delivered by Gary Bugden at a seminar conducted by the Society of Notaries of Queensland in 1999. The numbers of countries which are parties to the Convention continues to grow and the latest list is that appearing elsewhere in this manual. The fee payable to the Department of Foreign Affairs and Trade for the affixation of the apostile changes periodically. This paper is reproduced by kind permission of Gary Bugden. *Amended by Geoff Kelly, Queensland State Office, DFAT, 1 September 2008.*

1 Introduction

- 1.1 This paper is about the multilateral Convention adopted at the Ninth Session of the Hague Conference on Private International Law held on 26 October 1960. The Convention relates to the abolition of the requirement for “legalisation” for foreign public documents. It examines the effect of the Convention on the authentication of documents involving countries that are bound by the Convention.
- 1.2 Eighteen member nations attended the Ninth Session, but it was Great Britain that proposed to the Committee of Ministers of the Council of Europe that the Hague Conference address the elimination of the processes of legalisation. The resulting treaty, written in the French language, is very brief. The first 9 articles of the Convention are substantive in nature, while the remaining 6 articles are more ministerial.

2 The process of “legalisation”

- 2.1 The term legalisation is defined in the Convention to mean “only the formality by which the diplomatic or consular agents of the country in which the document has to be produced certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears”.
- 2.2 The term is also known as “consularisation”.
- 2.3 Generally speaking, the only documents that are capable of being legalised are documents issued by a notary public or some other public official in the country of issue. The legalisation process involves the document being forwarded to the embassy or consulate of the country in which it is to be used. The notary need not attend at the embassy or consulate, although it is normally necessary for the notary to deposit a specimen of their signature and an impression of their seal of office.
- 2.4 This is why notaries should consider providing the embassies or consulates of the more significant countries (and particularly those not bound by the Convention) with a specimen of their signature and an impression of their seal of office. In this way their credentials will be established before the need for a legalisation arises.

3 Public documents

- 3.1 The following are “public documents” for the purpose of the Convention:
 - (a) documents emanating from an authority or an official connected with the courts or tribunals of a contracting State, including those emanating from a public prosecutor, a clerk of a court or a process server;
 - (b) administrative documents;
 - (c) notarial acts; and
 - (d) official certificates which are placed on documents signed by persons in their private capacity, such as official certificates recording the registration of a document or the fact that it was in existence on a certain date and official and notarial authentications of signatures.
- 3.2 The Convention does not apply to documents executed by diplomatic or consular agents or those dealing directly with commercial or customs operations.

4 The Apostille

4.1 Under the terms of the Convention, the only formality required to certify:

- (a) the authenticity of the signature;
- (b) the capacity in which the person signing the document has acted; and
- (c) the identity of the seal or stamp which it bears (where appropriate),

is the addition of an Apostille.

4.2 An Apostille is a certificate in the form required by the Convention.

4.3 An Apostille is not required where the public document relates to two contracting States who, between them, have abolished or simplified it. This will often apply between the United Kingdom and Commonwealth countries.

4.4 The Apostille must be placed on the document itself or on an “allonge” (i.e. a lengthening or continuation of the document, such as an annexure). It must be in the form of the model annexed to the Convention, although it need not be in French provided the title is in French. The model requires the certificate to be in the form of a “square” (which really means rectangle) with sides at least 9 centimetres long.

4.5 The certificate is issued at the request of the person who signed the document which the certificate relates, or to a bearer of the document. When properly filled in the certificate certifies:

- (a) the authenticity of the signature;
- (b) the capacity in which the person signing the document has acted; and
- (c) the identity of the seal or stamp which it bears (where appropriate) .

4.6 The signature, seal and stamp on the certificate are exempt from all certification.

4.7 The following is an illustration of the required certificate:

APOSTILLE	
<i>(Convention de La Haye du 5 octobre 1961)</i>	
1. Country:	
This public document	
2. has been signed by	
3. acting in the capacity of	
4. bears the seal/stamp of	
Certified	
5. at	6. the
7. by	
8. No.	
9. Seal/stamp:	10. Signature

5 Authorities competent to issue the certificate

5.1 The Convention requires each contracting State to designate by their official function, the authorities who are competent to issue the certificate. Notice of such designation must then be given to the Ministry of Foreign Affairs of the Netherlands.

5.2 The Australian Government has designated the Secretary of the Department of Foreign Affairs and Trade as the competent authority for Australia. The Department maintains a record of the seals and signatures of notaries for the purpose of issuing Apostilles.

5.3 *As at September, 2008, the Department of Foreign Affairs and Trade charges a fee of \$60.00 for the issue of an Apostille, unless the document concerned has two or more pages where a signature or seal from the notary appears on all pages, in which event the fee is \$80.00 (to allow for a sealed attachment). The person within the Queensland State Office of the Department responsible for processing applications for an Apostille is Mr Geoff Kelly (Telephone 07 3405 4795).*

6 Register or card index

6.1 The Convention requires a designated authority (i.e. authorities competent to issue certificates) to keep a register or card index in which the following must be recorded for each certificate issued:

- (a) the number and date of the certificate; and
- (b) the name of the person signing the public document and the capacity in which they acted, or in the case of unsigned documents, the name of the authority which has affixed the seal or stamp.

6.2 Any interested person can request the designated authority who has issued a certificate to verify whether the particulars in the certificate correspond with those in the register or card index.

7 Foreign Evidence Act 1994 (Cwlth)

7.1 Contracting States are required to take necessary steps to prevent the performance of legalisations by its diplomatic or consular agents in cases where the Convention provides for exemption.

7.2 Part 5 of the Foreign Evidence Act 1994 (Cwlth) deals with authenticating foreign public documents. Section 37 of that Act reinforces the evidentiary value of certificates issued under the Convention and effectively prohibits an Australian court, or a person performing a function or exercising a power under an Australian Law, to require any formality other than a certificate under the Convention in order to certify:

- (a) the authenticity of the signature of the foreign public document;
- (b) the capacity in which the person signing the foreign public document has acted; and
- (c) where appropriate, the identify of the seal or stamp that the foreign public document bears.

7.3 Section 38 of that Act also prohibits an Australian court, or a person performing a function or exercising a power under an Australian law, to require a certificate to be issued under the Convention if the foreign public document concerned is not subject to a requirement of legalisation.

8 Contracting States

8.1 The following are parties to the Convention:

Albania	Belgium
Andorra	Belize
Antigua and Barbuda	Bosnia-Herzegovina
Argentina	Botswana
Armenia	Brunei Darussalam
Australia	Bulgaria
Austria	Colombia
Azerbaijan	Cook Islands
Bahamas	Croatia
Barbados	Cyprus
Belarus	Czech Republic

Denmark	Niue
Dominica	Norway
Ecuador	Panama
El Salvador	Poland
Estonia	Portugal ³
Fiji	Romania
Finland	Russian Federation
France ¹	Samoa
Georgia	San Marino
Germany	Sao Tome and Principe
Greece	Serbia
Grenada	Seychelles
Honduras	Slovakia
Hungary	Slovenia
Iceland	South Africa
India	Spain
Ireland	St Christopher (Kitts) and Nevis
Israel	St Lucia
Italy	St Vincent and the Grenadines
Japan	Suriname
Kazakhstan	Swaziland
Korea, Republic of	Sweden
Latvia	Switzerland
Lithuania	The former Yugoslav Republic of Macedonia
Lesotho	Tonga
Liberia	Trinidad and Tobago
Liechtenstein	Turkey
Luxembourg	Ukraine
Malawi	United Kingdom of Great Britain and Northern Ireland ⁴
Malta	United States ⁵
Marshall Islands	Venezuela
Mauritius	
Mexico	
Moldova, Republic of	
Monaco	
Montenegro	
Namibia	
Netherlands ²	
New Zealand	

¹ “France” includes French Guiana, Guadeloupe, Martinique, Reunion, French Polynesia, New Caledonia, St Pierre and Miquelon Wallis and Fortuna.

² The kingdom in Europe, Netherlands Antilles and Aruba.

³ Macao

⁴ Anguilla, the Bailiwick of Guernsey, Bermuda, British Antarctic Territory, Cayman Islands, Falkland Islands, Gibraltar, Hong Kong, the Isle of Man, the Isle of Jersey, Montserrat, St Helena, Turks and Caicos Islands, British Virgin Islands.

⁵ Those territories for the foreign relations of which the United States is responsible.

- 8.2 The list of contracting States varies from time to time. States bound by the Convention are able to withdraw in accordance with the procedure and timing set out in the Convention. Also, States that are not a party to the Convention are able to become parties. For example, Venezuela became part of the Convention as of 16 March 1999
- 8.3 A summary of the requirements for proof of documents intended to take effect outside the United Kingdom appears on pages 528-539 of *Brooke's Notary* (10th Edition). When using that material, it should be kept in mind that some of these requirements may have changed since that edition was published.

9 General comments

- 9.1 The Convention removes the need for a foreign public document to be authenticated by the embassy or consular office of the country in which the document is to be used. However, the Convention substitutes a process whereby the Apostille has to be added to the document by the competent authority of the government of the country in which the document was created. This suggests that the only real benefit flowing from the Convention is the “centralisation” of the authentication process. However, that is not the case.
- 9.2 In practice, the process of legalisation can be a lengthy and time-consuming process. It can often involve a chain of government executed certifications. The process of legalisation was described in an article by Stewart Baker and Theodore Barassi in “International Notarial Practitioner”⁶ as follows:
- [B]egins with the local U.S. notary, and concludes with the consul of the ... jurisdiction in which the [document] will be used. Each signature certifies the preceding governmental authority's signature. For a U.S. originating document, the most onerous process for legalisation would be as follows: 1) Notarisation by a US. notary; 2) Legalisation of the notary by a county clerk; 3) Legalisation of the county clerk by a state Secretary of State; 4) Legalisation of the state Secretary of State by the US. Department of State; 5,) Legalisation by the consul of the signature of the US. official; 6) Legalisation by the Foreign Minister of the signature of the consul; 7) Notarisation of the entirety by a notary of the enforcing jurisdiction.”*
- 9.3 The Convention has been criticised on the following grounds⁷ :
- (a) the Convention was written in the French language and certain fundamental provisions have been skewed in the translation from French to English, thus weakening the foundation on which the Convention is premised;
 - (b) there are no provisions to ensure the enforcement of the Treaty;
 - (c) the Convention has limited provisions setting standards of conduct for the issuing of authorities;
 - (d) the Apostille provisions are a problem in that:
 - (i) the Convention forbids any further procedures of authentication;
 - (ii) there is no provision to prevent the issuance of a false or counterfeit Apostille;
 - (iii) the only consistent feature found among Apostille issued in different nations is the French title;
 - (iv) there is no provision requiring member nations to regularly deposit an issuing authority's records of Apostille issued in a central location accessible by all member nations; and
 - (e) the Convention excludes documents intended solely for commercial use which lack notarisation.

⁶ International Law News, Fall 1995 at p.4.

⁷ Old Treaties Never Die, They Just Lose Their Teeth; Authentication needs of a Global Community Demand Retirement of The Hague Public Documents Convention” by Keith D Sherry, 1045 “The John Marshall Law Review”.

10 Conclusion

- 10.1 Where a public foreign document is notarised in Australia for use in another country that is a party to the Convention, then it is likely to require certification by the affixing of an Apostille.
- 10.2 Either the notary or the person who bears the document can send it to the Secretary of the Department of Foreign Affairs and Trade for this purpose. Depending upon the number of pages in the document, a fee of either \$60 or \$80 (as at September 2008) will be payable.

Memo: These charges change from time to time. The Department should be asked about current charges.

- 10.3 Where the country in which the document is to be used is not a party to the Convention, then the normal legalisation process will apply.

SECTION 4 Noting Dishonoured Bills of Exchange

I have been asked to explain the procedures for noting and protesting bills of exchange.

Essentially, the “noting” of a bill refers to making a record on the bill that a demand has been made for acceptance or payment of the bill and the demand was not met. The “protest” is the formal attestation under the notary’s seal that the bill has been duly presented and has been dishonoured by non-acceptance or non-payment.

In this paper I will discuss:

- what is a bill of exchange, what bills of exchange need to be noted or protested and why;
- the procedures for presenting bills for acceptance and payment;
- the procedure for noting and protesting, and documentation required.

What is a Bill of Exchange?

Bills of exchange are regulated by the Bills of Exchange Act 1909 (Cwth) (“Act”).

A “bill of exchange” is defined in section 8 of the Act as follows:

- “8. (1) *A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person, or to bearer.*
- (2) *An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.*
- (3) *An order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified order to pay, coupled with:*
- (a) *an indication of a particular fund out of which the drawee is to reimburse himself, or a particular account to be debited with the amount, or*
 - (b) *a statement of the transaction which gives rise to the bill;*
- is unconditional.*
- (4) *A bill is not invalid by reason:*
- (a) *that it is not dated;*
 - (b) *that it does not specify the value given, or that any value has been given therefor; or*
 - (c) *that it does not specify the place where it is drawn, or the place where it is payable.”*

The parties to a bill are the “drawer”, the “drawee” and the “payee”. A bill may also have an “indorser” or “indorsers”.

The “drawer” is the party which creates the bill by giving the order to pay the sum of money. The “drawee” is the person who is given the order to pay the sum of money. The “payee” is the person entitled to payment of the sum of money.

The payee of a bill may transfer (“negotiate”) the bill to another party by signing the bill and delivering it to that other party. The act of signing and delivering the bill is referred to as “indorsing” a bill.

A bill may be negotiated a number of times before it falls due for payment and may therefore have a number of indorsers.

The party who is at any particular time entitled to the bill is referred to as the “holder in due course”.

The entity which is the holder in due course at the time the bill falls due for payment is entitled to present the bill for payment and collect the sum payable.

Foreign and Inland Bills

The Act distinguishes between foreign and inland bills. The distinction is important, as noting and protesting is only required for foreign bills. The definitions are contained in section 9 of the Act as follows:

“9. (1) *An inland bill is a bill which is, or on the fact of it purports to be:*

(a) both drawn and payable within Australasia; or

(b) drawn within Australasia upon some person resident therein.

Any other bill is a foreign bill.

(2) *Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.”*

“Australasia” is further defined to mean Australia and any territory, New Zealand and the Fiji Islands.

The most usual situation in which a notary may be requested to note and protest a bill will involve a foreign drawer, who has drawn a bill on an Australian resident payable to a foreign payee (often a foreign bank).

Normally the drawee’s bank receives instructions from the foreign bank which is the holder of the bill to collect the proceeds on behalf of the foreign bank from the Australian bank’s customer. If the bill is dishonoured, the foreign bank then gives instructions to the Australian bank to arrange for the noting and protesting. Therefore in practice instructions to note and protest a bill of exchange will always come from the bank, although there is no requirement that this is the case.

Due Date for Payment of a Bill

A bill must be presented for payment by the holder in due course on its due date. If it is not paid on that date, the holder must dishonour the bill for non-payment on that date.

The rules for determining the due date are:

- Where a payment date is specified on the bill, the due date is the specified payment date.
- If the payment date is “X days after sight”, the bill must be presented for acceptance and the due date is X days after the date on which it was presented for acceptance.
- If the payment date is “X days after the date of any document or event (e.g. bill of lading)”, the due date is X days from the date of the document or event referred to in the bill.
- If there is no payment date or the bill is expressed to be payable “at sight” or “on demand” the bill can be presented on any business day.
- If the payment date calculated under any of these rules falls on a non-business day, then the due date is the next business day.

Acceptance of a Bill

The Act requires that a bill be presented for acceptance before being presented for payment;

- if the bill is payable “X days after sight”.
- if the bill states it must be presented for acceptance (e.g., it is expressed to be payable “X days after presentment for acceptance” or equivalent words).
- if the bill is payable elsewhere than at the drawee’s residence or place of business.

Presentment for acceptance is otherwise not required.

“Acceptance” simply means that the drawee (i.e. the person who is ordered to pay the sum of money specified in the bill) signs the bill to indicate that the drawee accepts liability to pay the sum specified in the bill.

If the bill is not accepted, the holder may immediately dishonour the bill and is not required to present the bill for payment on the due date. The drawee is not liable to pay the amount specified in the bill unless the drawee accepts the bill. Where the drawee does not accept the bill, the drawer (and any indorsers) are immediately liable on the bill (if it is properly noted).

Generally, the banks follow a practice of presenting bills for acceptance before presenting the bill for payment, whether or not acceptance is strictly required under the Act. If the bill is not accepted, the bank may then instruct a notary to note and protest the bill for non-acceptance.

Where a bill has been accepted, it must then be presented for payment on the due date. If it is not then paid on the due date it is then dishonoured for non-payment.

Proper place for Presentment

The bill must be presented for payment at the “proper place”.

The “proper place” (see section 50(2)(d) of the Act) is determined in accordance with the following rules:

- where a place for payment is specified on the bill, the bill must be presented at that place;
- where no place for payment is specified on the bill, but the address of the drawee is specified, the bill must be presented at that address;
- where no place for payment is specified on the bill and no address is given, the bill must be presented at the drawee’s place of business if known, and if the place of business is not known, the drawee’s ordinary place of residence;
- in any other case, the bill must be presented to the drawee wherever the drawee can be found, or presented at the drawee’s last known place of business or residence.

The usual case is that the drawer does not specify a place for payment when drawing the bill, but specifies the drawee’s business address on the bill. The banks, however, follow a practice when presenting a bill for acceptance of affixing a rubber stamp endorsement on the reverse of the bill bearing the words:

“Sighted .../.../....

and accepted payable at

[name of bank]

... branch.”

The drawee is then asked to complete that endorsement and sign the bill below those words to indicate acceptance. Once the bill has been accepted in this form, the place for payment specified on the bill is the branch of the bank specified on the endorsement.

The effect of this practice is that, if a bill having been accepted is subsequently dishonoured for non-payment, the “proper place” for payment of the bill will be the branch of the bank specified in the endorsement on the reverse of the bill. However, if the bill is payable at sight, or for any other reason was not presented for acceptance prior to presentment for payment, the “proper place” for payment will, in the usual case, be the address of the drawee specified on the front of the bill.

Valid Presentment of a Bill

In order for any party to be liable on the bill:

- the bill must be presented by the holder in due course or an agent authorised by the holder to receive payment on behalf of the holder;
- presentment must be made at a reasonable hour on the date the bill falls due (or if the bill is payable on demand at a reasonable hour on a business day within a reasonable time after the issue of the bill);
- the bill must be presented at the proper place.

Where a bill is presented at the proper place, and after the exercise of reasonable diligence no person authorised to pay or refuse payment can be found there, no further presentment is required, and the holder may treat the bill as dishonoured.

Noting and Protest Procedure

Where a foreign bill has been properly presented and properly dishonoured the notary may then be instructed to note and/or protest the bill. The bill must be noted within 48 hours of dishonour. The protest may be drawn up at any time afterwards, but in practice the noting and the protest are normally done at the same time.

The holder must therefore instruct the notary to conduct the noting within 48 hours of the dishonour of the bill.

The procedure for noting and protesting a bill essentially involves the notary's clerk presenting the bill, in accordance with the same rules for presentment as apply to the holder, and then making a note of the drawee's response. The bill must be protested at the place where it is dishonoured (**except** for a bill payable at the place of business or residence of a person other than the drawee which is dishonoured for non-acceptance, in which case the bill must be protested at the place where it is expressed to be payable).

The following procedure is normally adopted:

- (1) The clerk must attend at the proper place for payment during business hours.

If attending at a branch of a bank, the clerk should ask to speak to the manager or accountant at the branch.

If attending at a drawee's address, the clerk should ask to see a director or manager of the company or whoever is in charge at the premises. That person should then be asked whether they have authority to pay or refuse payment of the bill. Generally, if the drawee is a company, only a director is authorised to pay or refuse payment, but it may be that the secretary or another senior officer of the company is present who has authority to pay or refuse payment of the bill.

The clerk should make a note of the person's full name and position (or record that the person refused to give those details if this is the case).

If the clerk is informed that there is no person on the premises who has authority to pay or to refuse payment of the bill, then the clerk is not required to present the bill.

- (2) The clerk must show the bill to the person to whom the bill is being presented and make a demand for payment or acceptance of the bill. The clerk then makes a note of the response given by the person to whom presentment is made. If no response is given the clerk should make a note to that effect.
- (3) The clerk must take the bill with them when they leave the premises.

It is a common practice amongst notaries, where the proper place for payment is a bank, that the bill is presented both at the bank and at the drawee's address specified on the bill. Both attendances are then recorded by the clerk.

Noting and Protesting Documentation

Noting and protesting of a bill requires the following documentation:

- The notary includes in the notarial register, on a separate page number, a record of the presentment of the bill by the notary's clerk. The notary's clerk initials the record.
- The notary records on the bill the date of dishonour, the noting charges and the page number of the notary's notarial register, and initials the record. The answer given to the clerk is also recorded on the bill. Normally, the details are recorded on a ticket which is attached to the bill. The notary's seal may also be impressed on the ticket and the bill.
- The protest is then drawn up. The protest is a formal announcement or attestation under the notary's signature and seal that the bill has been duly presented and has been dishonoured.

The Act has the following requirements for the form of a protest (section 56(7)):

- the protest must contain a copy of the bill;
- the protest must be signed by the notary;
- the protest must specify the person at whose request the bill is protested (normally the bank from which the instructions were received);
- the protest must specify:
 - the place and date of protest;
 - the cause or reason for protesting the bill (i.e. non-acceptance or non-payment);
 - the demand made (i.e. for payment or for acceptance);
 - the answer given, if any, or the fact that the drawee or acceptor could not be found.

In practice, all of those details are also recorded in the notarial register, so that the page of the notarial register contains all of the necessary information to comply with section 56(7) when the protest certificate is drawn.

There is no prescribed form for a protest certificate; it is only necessary that the document contain the information prescribed in section 56(7). Attached to this paper is a sample checklist which will assist in ensuring that all of the necessary information is collected to prepare a protest.

The notary should retain a copy of the bill (including the noting ticket) and a copy of the protest, in addition to the page of the notarial register.

The original bill with the ticket affixed and the original protest certificate should then be returned to the party which gave the notary the instructions.

Purpose of Noting and Protesting

Where a foreign bill is dishonoured, if it is not noted within 48 hours after its dishonour (and subsequently protested) the drawer and indorsers are discharged from liability under the bill. This can be significant, as a key feature of a bill of exchange is that if the drawee does not accept liability to pay the bill, or having accepted liability then fails to pay, the drawer and all indorsers of the bill can be liable to the holder in due course for payment of the specified sum. A failure to comply with the noting procedure therefore means that the holder cannot sue the drawer or any indorsers on the bill.

In practice, however, a bill of exchange generally reflects an underlying transaction or a number of underlying transactions, usually a loan arrangement and/or an arrangement for supply of goods. A common example is that the drawer has borrowed money from the payee bank, and has supplied goods to the drawee for which it has an arrangement for payment. The drawee is therefore ordered to make payment for the goods direct to the payee bank, towards payment of the drawer's obligation under the loan arrangement. (The payee bank may then sell the bill to another bank, so that it effectively receives payment immediately, and the transferee bank becomes entitled to payment on the due date.) Liabilities have therefore arisen under the loan arrangement between the drawer and the payee bank, and under the supply agreement between the drawer and the drawee. It appears that it is therefore often the case the parties will rely on their entitlements under the underlying transactions rather than suing on the bill.

It is not therefore always the case that the holder of a bill will require that the bill is noted and protested for non-acceptance or non-payment. It is however important to be aware of the procedural requirements, so that a noting and protesting can be undertaken in a timely manner if required.

CHECKLIST FOR PRESENTING BILL OF EXCHANGE

1 PROTEST INSTRUCTIONS

Instructions received from?

Non-payment or Non-acceptance?

Instructions received within 48 hours of dishonour?

2 BILL DETAILS

Drawer

Drawee

Proper place for payment

3 DOCUMENTATION DETAILS

Notarial Register page number

Noting charges

4 PRESENTMENT DETAILS (to be completed by clerk when bill presented)

Date _____ Time _____

Full name of presentee

Qualification (position) of presentee

Answer

Any additional details

(Details to be repeated if bill is presented at more than one place).

Joanne Dwyer
Senior Associate
Corrs Chambers Westgarth

SECTION 5 Ships Protests

Two or three generations ago, from a super abundance of caution, it was the practice of Ship's Masters to note Protest promptly after arriving in each port.

The entering of a Note of Protest, or 'Noting Protest' as it usually termed now, is a procedure which has existed for centuries. According to the New South Wales Society of Notaries the earliest reported case on the effect of a Ship's Protest was in 1796.

Although Ship's Masters do not now note protest as a matter of course, it would be a rash or imprudent Master who did not note protest if the voyage was in any way eventful.

Why?

Actually, there is a little (but only a little) to be gained by noting protest of itself but, as we shall see, it provides a potential key or pathway to the substantially greater protection that can be afforded the Master, the Owners and/or the Charterers by way of an extended Note of Protest.

The concept of noting protest should always be observed when it is believed or feared that during the voyage damage has been, or might have been, caused to the ship's cargo or the vessel herself in order to show that the damage was caused by maritime perils and not by misconduct on the part of the Master, officers or crew.

So far as concerns damage to cargo, heavy weather is by no means the only basis regarding which protest ought to be made. For example, I can recall the Master of a vessel with a cargo of specialised steel products who protested regarding a fair weather voyage when the temperature fluctuated from very low to extremely high with varying amounts of humidity as he was concerned that the condensation in the holds might have resulted in corrosion resulting in the steel being substantially damaged or rendered unfit for the purpose for which it was required. As it transpired, the Master's fears were well founded.

Similarly, there have been protests with regard to refrigerated or chilled cargo when high temperatures have been encountered even though there may not have been an actual failure of the ship's refrigeration equipment, only a fear that it may have been unable to cope in the prevailing climatic conditions.

By noting protest, Masters may subsequently relieve their employers of liability if the cargo be found damaged on delivery because, if there be no Note of Protest, there cannot subsequently be a regular (or as it is generally called) an Extended Protest.

A Note of Protest is in the nature of a notice by the Master of his intention to protest should circumstances render a regular or extended protest necessary by reason of total or partial loss or damage to the vessel or its cargo, or to enable reliance to be placed upon stipulations inserted in a charter party or a bill of lading relating to events attributable to maritime policies or Acts of God, and the like. It will be appreciated that the extent of damage to a ship's hull following a grounding may not become apparent until it is dry docked, the extent of damage to equipment until it is disassembled, and damage to cargo until it is discharged and unpacked.

An Extended Protest is based upon entries in the ship's official log, made contemporaneously by the Master or the ship's officer in charge of the relevant watch and any other pertinent information supplied to the Notary by the Master, officers or crew.

Although the Extended Protest is not received in either Australia or the United Kingdom as evidence in favour of the Master, Owners or Charterers, it is nevertheless a particularly important document in matters connected with the adjustment of losses in marine insurance and the calculation of averages.

Arnould, in his two volume treatise on the Law of Marine Insurance and Average, refers to a “general average loss” as one arising consequent upon the intentional result of the act of man, e.g. from damages purposely submitted to or directly affected by the agency and will of man, not accidentally caused by the agency of the wind or the waves. For example, if the vessel is making water in a storm with every sea, and goods are thrown overboard to lighten her, the loss and damage so sustained by the owner of the goods is a loss which gives him a claim to general average contribution as a loss was suffered for the sake of all.

Under Section 108 of the Commonwealth Evidence Act, a Note of Protest may be admitted in legal proceedings (subject to Section 39) and can also be admitted with the leave of the Court (if evidence of a prior inconsistent statement has been admitted) to contradict a suggestion of fabrication or construction of evidence or to re-establish credibility, in the light of evidence which may have been admitted under Sections 105 or 107.

In many foreign countries however, a Master’s Protest, duly authenticated by the signature and official seal of a Notary or other authorised person (such as a Consul) is accepted as conclusive evidence of the facts stated and in a general commercial sense is relied upon in most countries, including ours, by Bankers, Traders, Underwriters and Insurers in negotiating and settling claims.

While it is unlikely that many of us will be involved in Extended Notes of Protest, it is worthwhile having a proper concept of what is involved.

The importance of noting protest at the earliest possible opportunity after arriving in port cannot be overly stressed. If Protest is not noted promptly, the reason for the delay should be recorded in the Protest. For example:

“and the said “X Y” the Master of the said vessel “Z” says that he was engaged since the arrival of the vessel on urgent ship’s business and was unable to present himself at the office of the Notary until .. o’clock in the .. noon on the .. day of.. 19..” “that the said vessel arrived at the Port of.. at .. o’clock in the evening on the day of .. 19.., a Friday, and the next days being a Saturday and a Sunday, he was unable to obtain the services of a Notary until Monday, the .. day of 19..””

However, it does not need to be said, with regard to Notes of Protest, as indeed with regard to any documentation notarised, such must always bear the true date and if there is any reason for delay it should be explained as referred to above.

Notaries have been criticised for being overly verbose with regard to preparations of their Notes of Protest.

Usually the Note of Protest consists of an entry or note containing the name of the Master, the name and perhaps tonnage of the vessel, the port and date of departure, the day of arrival, the nature of the cargo and a short account of the accidents or incidents of the voyage upon which reliance may be made in the future with regard to extending the protest and, of course, the Note always concludes with the words:-

“and the said Master hereby gives notice of his intention to protest and causes this note or minute of all and singular the premises to be entered in this Register.”

There is no particular form or set precedent for a Note of Protest but every Protest must, however, deal with the following two essential items:-

The first is a detailed statement in chronological order of the remarkable or unusual events of the voyage upon which reliance may be wished to be made including an account of all the maritime perils upon which the Master intends to rely. If there has been an accident and loss or damage has been sustained the Note might particularise the means employed by the crew to avoid the accident and minimise the damage or loss. Reference, for example, could be made in the Note of Protest to entries made in the vessel's Sea Log.

The second indispensable aspect of the Note of Protest is the part in which the 'appearers' as they are called or the Notary or both protest against the accidents and causes of the injury and against all loss or damage occasioned thereby.

Resist the temptation to make the protesting part unnecessarily long. A short and plain statement is all that is required.

Copies of Notes of Protest utilised by the writer are set out below.

As is the case with regard to a Note of Protest, an Extended Protest is not constituted by any particular precedent or form from which no deviation is allowed. However, the following essentials should be complied with:-

1. The parties to the Protest should include the Master and also any of the officers or other members of the crew who, from their own direct knowledge, can record the relevant events;
2. It should contain a true and correct record from the Ship's Log, set out in chronological order, of the unusual or extraordinary events or incidents of the voyage, including an account of the maritime dangers upon which the Master intends to rely;
3. If there was an accident and loss or damage was sustained it should detail particulars of the means employed by the Master and the crew to avoid the incident and minimise the damage or loss;
4. The Protest should be in numbered paragraphs;
5. Whenever one of the parties to the Protest alone can testify to a fact from his own knowledge, that fact should appear in a separate paragraph.

Basically the essentials of an Extended Protest are accuracy, conciseness, and clarity of statement and faithful recording of the material events from the Ship's Log. Any error in faithfully recording the relevant events may well give rise to evidentiary problems of the nature referred to earlier. The recording of the events need not be by way of extracts from the Log but should accurately record the times and material facts from the Log.

My experience has been that the Ship's Agent, Master and associated parties may require between 2 and 7 copies of the Note of Protest. Rather than become involved in the cost and inconvenience of certifying copies, my approach has been to prepare the appropriate number of Notes of Protest required, all as originals. The ready availability of photocopying machines which reproduce with clarity and speed enables me to provide what are, in effect, a number of original Notes of Protest to the client without incurring the cost or inconvenience of certification. My practice is to engross the proposed Note of Protest, usually from material faxed by the agent, and have it waiting for the Ship's Master when he arrives at the office. If the document

requires modification this can be readily done and I then arrange for the requisite number of photocopies to be made of the document, before it is executed, so that I retain the original engrossed copy in my records and I then have the Master execute and notarise the appropriate number required in those particular circumstances. In that way, all of the documents that leave my office are originals. For obvious reasons I always retain what I might refer to as the “top copy” or engrossed copy which is held in my Notarial file. It does not have to be either signed or sealed by me (but it does by the Master) although I usually sign and seal at the same time when I am attending to all of the others so that clearly my “original” is complete in every way.

It is also worth while enquiring of the Ship’s Agents as to how many copies of the account are required. Again the number of copies of the account can vary, in my experience, between 2 and 7.

As an aside, don’t lose sight of the fact that when you are approached by the Ship’s Agents for notarial work, many take the view that they are Ship’s Agents in the true sense of agency and you can only expect to be paid your fee if they, in turn, are paid. In those circumstances it some times will assist you financially if you can facilitate the Ship’s Agents recovery of their own fees. One way of doing this is, in conjunction with the Ship’s Agent, to ask the Master to sign and approve all copies of your account at the time you make them available to the Master and to the Agents with the appropriate number of Notes of Protest.

My own practice has been not only to keep the top copy of the Note of Protest in a separate ring binder file with copies of other notarised documents which I need to retain on a permanent basis but also to make an appropriate entry in my bound (as distinct from loose leaf) register of the due execution of the Note of Protest. I use a note to the following effect:-

“1998 - July 20 - ABC Asia Express Pty. Ltd. Re MV “Z”

Notarially witnessing execution of Note of Protest by Captain XY . Master of
the MV “Z” - 1 x 4

Precedents

ON the Twenty second day of September in the year of Our Lord One thousand nine hundred and ninety personally appeared and presented himself at the office of **RICHARD DAVID HOARE**, Suncorp Centre, Albert and Turbot Streets, Brisbane in the State of Queensland, Notary Public, H S T Master of the Motor Vessel “ ” which sailed on a voyage from New Zealand on the Thirty first day of August One thousand nine hundred and ninety bound for Brisbane Australia and arriving at Brisbane on the Fifth day of September One thousand nine hundred and ninety laden with cargo DURING the voyage to Brisbane on the Second, Third and Fourth days of September One thousand nine hundred and ninety the vessel encountered heavy weather causing the vessel to roll and pitch and take seas on deck which is more particularly detailed in the vessel’s Logbook copies of which are hereunto annexed AND FEARING damage and/or loss to the vessel and/or her cargo HEREBY GIVES NOTICE of his intention of protesting and causes this note or minute of all and singular the premises to be entered in this Register AND ALSO RESERVES the right to extend this Protest at any time and place convenient AND FURTHER STATES that he was unable to attend to note protest before this day because the exigencies of the liner service provided by the vessel did not permit him to appear before a Notary until this day following the return voyage of the vessel to Brisbane from New Zealand with no Notary Public being available at

TAKEN before me this Twenty second)

day of September in the year One)

thousand nine hundred and ninety)

MASTER

RICHARD DAVID HOARE

NOTARY PUBLIC

BRISBANE

QUEENSLAND

ON the Twenty-eighth day of August in the year of Our Lord One thousand nine hundred and ninety personally appeared and presented himself at the office of RICHARD DAVID HOARE, Suncorp Centre, Albert and Turbot Streets, Brisbane in the State of Queensland, Notary Public, V.A.Master of the Motor Vessel “ ”, Port of Registry Vladivostok, USSR, which sailed on a voyage from Yokohama via the ports of Japan, Hong Kong and Manila on the sixth day of August One thousand nine hundred and laden with a containerised general cargo of , and arrived at Brisbane aforesaid on the twenty-eighth day of August One thousand nine hundred and ninety DURING the voyage the vessel encountered heavy weather, humidity, varying temperatures of air and water, sweating and vibration of the hull more particularly detailed in the vessel’s log book AND FEARING damage to the vessel and/or cargo HEREBY GIVES NOTICE of his intention of protesting and causes this note or minute of all and singular the premises to be entered in this Register AND ALSO RESERVES the right to extend this Protest at any time and place convenient.

TAKEN before me this 28th)
 day of August in the year)
 One thousand nine hundred)
 and ninety)

MASTER

RICHARD DAVID HOARE,
NOTARY PUBLIC,
BRISBANE
QUEENSLAND
AUSTRALIA

ON the third day of July in the year of Our Lord One thousand nine hundred and eighty personally appeared and presented himself at the office of **RICHARD DAVID HOARE** S.G.I.O. Building Albert and Turbot Streets Brisbane in the State of Queensland Notary Public H.H Master of the Japanese Motor Vessel “ ” which sailed on a voyage from Japan on the fourth day of June One thousand nine hundred and eighty for Australian Ports via Osaka, Yokohama, Pusan and Kaohsiung and departed Kaohsiung on the nineteenth day of June One thousand nine hundred and eighty and arrived in the Port of Brisbane Australia aforesaid on the third day of July One thousand nine hundred and eighty laden with a cargo of DURING the voyage between the twenty-first and twenty-third days of June One thousand nine hundred and eighty the vessel encountered violent stormy weather wind force 7 to 8 causing the ship to labour heavily and shipping water on decks AND FEARING damage to the ship and/or cargo HEREBY GIVES NOTICE of his intention of protesting and causes this note or minute of all and singular the premises to be entered in this Register AND ALSO RESERVES the right to extend this Protest at any time and place convenient.

TAKEN before me this third)
 day of July in the year One)
 thousand nine hundred and)
 eighty :)

MASTER

RICHARD DAVID HOARE
NOTARY PUBLIC
BRISBANE

ON the Eleventh day of August in the year of Our Lord One thousand nine hundred and ninety personally appeared and presented himself at the office of RICHARD DAVID HOARE, Comalco Place, 12 Creek Street, Brisbane in the State of Queensland, Australia, Notary Public, G. V. Master of the Motor Vessel “ ” which sailed on a voyage from Indonesia on the Second day of August One thousand nine hundred and ninety and arriving at the port of Brisbane Australia on the 9th day of August One thousand nine hundred and ninety laden with a cargo of DURING the voyage on the Third, Fourth and Fifth days of August One thousand nine hundred and ninety the vessel encountered very heavy weather with wind of Force 5-6 from E, SE and high seas causing the vessel to pitch, roll and labour and to ship heavy seas with deck cargo, hatch covers and vents being continually awash and sprayed with sea water AND FEARING damage to the vessel and/or its cargo HEREBY GIVES NOTICE of his intention of protesting and causes this note or minute of all and singular the premises to be entered in this Register AND ALSO RESERVES the right to extend this Protest at any time and place convenient AND WHO DECLARES that the annexed copies extract from the log book of the said M.V. “ ” are true and accurate in all respects.

TAKEN before me this Eleventh day)
of August One thousand nine hundred)
and ninety) MASTER

RICHARD DAVID HOARE
NOTARY PUBLIC
BRISBANE
QUEENSLAND
AUSTRALIA

ON the Sixteenth day of May in the year of Our Lord One thousand nine hundred and ninety personally appeared and presented himself at the office of **RICHARD DAVID HOARE**, Comalco Place, 12 Creek Street, Brisbane in the State of Queensland, Australia, Notary Public, M.S. Master of the Motor Vessel “ ” which sailed on a voyage from on the Third day of May One thousand nine hundred and ninety and arriving at the port of Brisbane Australia on the Fifteenth day of May One thousand nine hundred and ninety laden with containers and break bulk cargo of DURING the voyage on the Ninth day of May One thousand nine hundred and ninety while refilling ballast tanks numbered 4.10 and 4.11, I observed heavy fuel oil overflow on the deck escaping through the tanks’ vents at which time I immediately stopped pumping and stopped engines to facilitate the cleaning of all parts of the ship which were contaminated whereupon the vessel then proceeded to Brisbane, Australia when the tanks’ soundings showed that the ballast tank numbered 4.9 and the heavy fuel tank numbered 1.1 were connected for reasons unknown from which I reached the conclusion that ballast tanks numbered 4.10 and 4.11 were contaminated with heavy fuel oil AND FEARING damage to the vessel and/or its cargo HEREBY GIVES NOTICE of his intention of protesting and causes this note or minute of all and singular the premises to be entered in this Register AND ALSO RESERVES the right to extend this Protest at any time and place convenient

TAKEN before me this Sixteenth day of)
 May One thousand nine hundred)
 and ninety) MASTER

RICHARD DAVID HOARE
NOTARY PUBLIC
BRISBANE
QUEENSLAND
AUSTRALIA

David Hoare, Thynne & Macartney

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Rules

of

The Society of Notaries of Queensland Incorporated

an incorporated association

1. Preliminary

Definitions

1.1 The following words have these meanings in these Rules unless the contrary intention appears.

Act means the Associations Incorporation Act 1981 (Qld).

Chief Executive means the chief executive as defined in the Act.

Council means all or some of the Councillors acting as the management committee of the Society.

Councillor means a person holding office as a councillor of the Society.

Member means a person entered in the Register of Members as a member of the Society.

Notary means a Notary Public duly admitted and sworn pursuant to a Faculty of the Court of Faculties of His Grace the Archbishop of Canterbury.

Register of Members means the register of members of the Society provided for in Rule 6.7.

Rules means the rules of the Society.

Secretary means a person appointed under Rule 12 as secretary of the Society.

Society means The Society of Notaries of Queensland Incorporated.

Special Resolution means a special resolution of the Society passed in accordance with Rule 8.12.

Unincorporated Association means The Society of Notaries of Queensland.

Interpretation

1.2 In these Rules unless the contrary intention appears:

- (a) words importing any gender include all other genders;
- (b) the singular includes the plural and vice versa;

- (c) a reference to a law includes regulations and instruments made under the law; and
- (d) a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision, whether by a State or the Commonwealth of Australia or otherwise.

1.3 Headings are inserted for convenience and do not affect the interpretation of these Rules.

Section 47 not to apply

1.4 Section 47(1) of the Act does not apply to these Rules.

2 Name

2.1 The name of the association is The Society of Notaries of Queensland Incorporated.

3 Rules

Replacement of previous rules

3.1 All previous rules of the Unincorporated Association are repealed but this will not affect the validity of any act done under the authority of a rule now repealed.

Alteration of Rules

3.2 Subject to the provisions of the Act, the Society may amend these Rules by Special Resolution.

3.3 An amendment of these Rules is valid only if it is registered by the Chief Executive in accordance with the Act.

Interpretation of Rules

3.4 Subject to the provisions of the Act, the correct interpretation of these Rules will be determined by the Council whose decisions are final and binding upon the Members.

4 Objects

4.1 The objects of the Society are:

- (a) to support and promote the character, status and interests of Notaries in Queensland;
- (b) to promote honourable practice, to repress malpractice and to settle disputed points of practice;
- (c) to decide all questions of professional usage or courtesy between or amongst Notaries;
- (d) to consider all questions affecting the interests of Notaries;
- (e) to engage in the reform of the law relevant to the practice of Notaries;

- (f) to consider all future applications of persons applying to the Court of Faculties in London for appointments as Notaries and to support or oppose these applications;
- (g) to consider what is an appropriate number of Notaries for Brisbane, Rockhampton, and Townsville and any other cities, towns or districts in Queensland;
- (h) to acquire by purchase, donation or otherwise a library and to maintain the library;
- (i) to provide rooms or other facilities for the holding of meetings of the Society or other matters;
- (j) to encourage the study of the law, and provide all information on subjects important to the practice of Notaries;
- (k) to make, alter or repeal rules for the good government of the Society;
- (l) to recommend the fees to be charged by Notaries; and
- (m) to do all other things necessary for the attainment of the above objects.

5 Powers

Society has all the powers of an individual

5.1 The Society has, in the attainment of its objects, all the powers of an individual.

Examples of Society's powers

5.2 The Society may, for example:

- (a) enter into contracts;
- (b) acquire, hold, deal with and dispose of property;
- (c) make charges for service and facilities it supplies; and
- (d) do other things necessary in the attainment of its objects.

Society may take over funds of the Unincorporated Association

5.3 The Society may take over the funds and other assets and liabilities of the Unincorporated Association.

Society may issue notes and debentures

5.4 The Society may issue secured and unsecured notes, debentures and debenture stock for the Society.

6 Membership

Eligibility

6.1 Every Notary practising in Queensland is eligible to be a Member of the Society.

Members of the Unincorporated Association

- 6.2 A member of the Unincorporated Association at the date of incorporation of the Society will be admitted as a Member of the Society by the Council if the member agrees before a date fixed by the Council to become a Member of the Society.
- 6.3 A Member of the Society admitted under Rule 6.2 will not be liable to pay the annual subscription fee of the Society if the Member has paid the annual subscription fee for the Unincorporated Association for the next financial year by the due date.

Application for membership

- 6.4 A Notary wishing to become a Member of the Society must apply to the Secretary in writing in a form to be obtained from the Secretary.
- 6.5 The Secretary must bring an application for membership properly completed in the form supplied by the Secretary before the Council at its next meeting.
- 6.6 The application will be decided by a majority of the votes of the members of the Council present.
- 6.6.1 The Council may confer honorary membership on any member who has held a faculty as a Notary Public for the State of Queensland for not less than 20 years and who has attained the age of 70 years. This power is deemed to have had effect since the date of incorporation of the Society. (Inserted 23-11-2001)
- 6.6.2 The Council may confer complimentary membership on any member who has attained the age of 55 years and who has retired from practice as a legal practitioner and who does not hold a practicing certificate and who has been a member of the society for not less than 15 years. A complimentary member shall not be liable to pay annual subscriptions. (Inserted 16 March 2006)

Register of Members

- 6.7 A Register of Members of the Society will be kept in which will be entered all the names and mailing addresses of all persons admitted to membership of the Society and the dates of their admission.
- 6.8 The Register of Members will also contain particulars of deaths, resignations, terminations and reinstatements of membership and any further particulars as the Council or the Members at any general meeting may require from time to time.
- 6.9 The Register of Members must be open for inspection at all reasonable times by any Member who applies to the Secretary prior to inspection.

Entrance fee

- 6.10 The entrance fee of the Society is:
- (a) \$150.00; or
- (b) any other amount the Council may from time to time determine.

Annual subscription fee

- 6.11 The annual subscription fee of the Society is:
- (a) \$75.00; or
 - (b) any other amount the Council may from time to time determine (including if the Council decides there is no annual subscription fee for that year).
- 6.12 The annual subscription fee must be paid in advance on 1 December each year.

Arrears

- 6.13 If the entrance fee or annual subscription fee of any Member is more than two years in arrears the Member automatically ceases to be a Member of the Society.
- 6.14 If any Member fails to pay the annual subscription fee within four weeks after the due date the Council may sue the Member for the amount owed and until the amount is paid the Member's rights and entitlements as a Member of the Society are suspended.

Privileges of the Society

- 6.15 A new Member is not entitled to the privileges of the Society until the Member has paid the entrance fee and annual subscription fee under Rule 6.10 and Rule 6.11.

Ineligibility to continue as Member

- 6.16 Unless the Council resolves to the contrary, a Member is ineligible to continue as a Member of the Society if:
- (a) the Member is adjudicated bankrupt or makes an arrangement or composition with creditors or takes the benefit of any law relating to bankruptcy or insolvency;
 - (b) the Member is convicted of any fraud or crime in any court of law; or
 - (c) the Council determines that the Member:
 - (i) has infringed any of these Rules or any by-law made by the Council under these Rules;
 - (ii) is guilty of misconduct in the Member's professional capacity as a Notary; or
 - (iii) has acted in a way that renders the Member unfit to remain a Member of the Society or which is contrary to the ethics, usages or interests of the profession of Notaries.
- 6.17 The Member will be liable for all damage, loss or expense sustained by the Society because of the Member's conduct under Rule 6.16 (c).

Procedural requirements when expelling a Member

- 6.18 A determination of the Council under Rule 6.16 (c) is valid if:

- (a) at least 14 days prior to the meeting the Member is given notice of the meeting and a statement in writing of the conduct imputed to the Member;
 - (b) the Member is afforded full opportunity at the meeting to defend and explain such conduct in writing or in person or by legal representative; and
 - (c) any determination made by the Council is evidenced by a resolution in the minutes of the Council.
- 6.19 Notice of the passing of a resolution under Rule 6.18 (c) must be sent by the Secretary to the Member who may within one month require the Council to convene a special general meeting of the Society to re-hear the matter and the decision of the meeting will be final and binding.
- 6.20 For the purpose of the special meeting held under Rule 6.19, the Member must be given the same notice and opportunities of defence and explanation as were given before the meeting of the Council that passed the resolution expelling the Member from the Society.

Further action

- 6.21 On the expulsion of a Member the Council may, unless otherwise directed by the meeting at which expulsion was decided upon, make a report to the Court of Faculties and any other authorities it may think fit and take any further action necessary for the cancellation of the Faculty of the Member.

Resignation

- 6.22 Members intending to resign from the Society must give one month's notice in writing to the Secretary before the expiration of any year of membership otherwise the Member is deemed to have continued their membership and will be liable for their subscription for the following year.

Removal from Register of Members

- 6.23 A Member who resigns or is expelled from the Society or ceases to be a Member under Rule 6.13 or Rule 6.16 must be removed from the Register of Members.

7 General Meetings

Annual general meeting

- 7.1 The first annual general meeting must be held within 18 months after the day the Society is incorporated.
- 7.2 Subject to Rule 7.3, each subsequent annual general meeting of the Society will be held on the day the Council may appoint in the month of November or at such later date as the Council may appoint in every year.
- 7.3 The annual general meeting of the Society must be held within three months after the end of the Society's previous financial year.

Business at annual general meeting

- 7.4 The business of the annual general meeting includes:
- (a) to receive the report of the Council;
 - (b) to adopt the audited financial statement for the past financial year;
 - (c) to elect a President, Vice-President, Treasurer and other members of the Council for the next year;
 - (d) to appoint an auditor or auditors for the next year; and
 - (e) to transact such other business as may be properly brought before it.

Special general meeting

- 7.5 The Council may whenever it thinks fit, and must upon a requisition made in writing to the President by two Councillors or by 15 Members, convene a special general meeting of the Society.
- 7.6 If the President does not within 21 days after the receipt of a requisition proceed to convene a special general meeting of the Society those making the requisition or any other Councillors or Members amounting to the required number may themselves convene a special general meeting.

Notice of general meeting

- 7.7 At least 14 days' notice must be given of a general meeting of the Members of the Society.
- 7.8 A notice of a general meeting must:
- (a) specify the place, day and hour of meeting, and the general nature of the business to be dealt with at the meeting and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this; and
 - (b) state that:
 - (i) a Member has a right to appoint a proxy;
 - (ii) a proxy must be a Member; and
 - (iii) an instrument appointing a proxy must be in writing signed by the appointor and lodged with the Secretary at least 24 hours before the time of meeting.
- 7.9 A notice of a general meeting must be by circular served upon each Member in accordance with Rule 15.
- 7.10 The non-receipt of notice of a general meeting by, or the accidental omission to give notice of a general meeting to, a person entitled to receive notice does not invalidate any resolution passed at the general meeting.

Notice of motion regarding Rules

- 7.11 No motion by any Member for the alteration of these Rules under Rule 3.2 may be entertained by any general meeting unless 21 days' notice has been given in writing to the Council through the Secretary by the Member making the proposal.

Notice of business

- 7.12 No Member may bring any business forward at any general meeting of the Society unless notice together with a sufficient description in writing of the business has been delivered to the Secretary at least 21 days before the general meeting and has been included in the notice calling the general meeting.

8 Proceedings at general meetings

Representation of Member

- 8.1 Any Member may be present and vote in person or may be represented at any general meeting of the Society by proxy.
- 8.2 An instrument appointing a proxy must be in writing signed by the appointor and in favour of a Member of the Society and lodged with the Secretary at least 24 hours before the time of meeting.

Quorum

- 8.3 No business may be transacted at any general meeting unless a quorum is present comprising ten Members entitled to vote at the meeting.

Failure to achieve quorum

- 8.4 If a meeting is convened on requisition and a quorum is not present within half an hour from the time appointed for the meeting, the meeting must be dissolved.
- 8.5 If a meeting is convened in any other case and a quorum is not present within half an hour from the time appointed for the meeting:
- (a) the meeting must be adjourned to the day, time and place fixed by a majority of the Members present or if no determination is made by them to the same day in the next week at the same time and place; and
 - (b) if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting then the meeting will lapse.

Appointment and powers of chairman of general meeting

- 8.6 The President, or in the President's absence the Vice-President, will preside as chairman at every general meeting.
- 8.7 If a general meeting is held and:
- (a) a President or Vice-President has not been elected; or

- (b) the President or Vice-President is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,
- then the Members present must elect one of their number to be chairman of the meeting.

Voting at general meeting

- 8.8 At any general meeting a resolution put to the vote of the meeting must be decided on a show of hands.

Questions decided by majority

- 8.9 A resolution is taken to be carried if a majority of the votes cast on the resolution are in favour of it.

Equality of votes - chairman's casting vote

- 8.10 If there is an equality of votes the chairman of the meeting has a casting vote in addition to a deliberative vote.

Entitlement to vote

- 8.11 No Member (if the Member's vote be objected to at the time) is qualified to vote who has not been a Member for the period of three months preceding the meeting.

Special Resolutions

- 8.12 A Special Resolution must be passed at a general meeting by the votes of $\frac{3}{4}$ of the Members who are present and entitled to vote on the resolution.
- 8.13 Subject to Rule 7.11, notice of a proposed Special Resolution, and of the time and place of the general meeting at which it is proposed to move the resolution, must be given to each Member in accordance with Rule 15.
- 8.14 The notice must state the terms of the proposed Special Resolution.
- 8.15 A Special Resolution about which notice has not been given under this Rule has no effect.
- 8.16 A declaration by the person presiding at a general meeting that a Special Resolution has been passed at the meeting by the votes of $\frac{3}{4}$ of the Members who are present and entitled to vote on the resolution is conclusive evidence of the fact, unless a poll is demanded at the meeting.

9 Council

Number of Councillors

- 9.1 The Society must have a management committee ("**Council**") of five Members, consisting of:
- (a) a President;
 - (b) a Vice-President;

- (c) a Treasurer; and
- (d) two other Members.

Term of office

- 9.2 Subject to Rule 9.3 and Rule 9.5, the members of the Council are to be elected at the annual general meeting of the Society.
- 9.3 The members of the Council are to be elected in the following manner:
- (a) any two Members of the Society may nominate any other Member to serve on the Council;
 - (b) the nomination, which must be in writing and signed by the Member and the Member's proposer and seconder, must be received by the Secretary at least 14 days before the annual general meeting at which the election is to take place; and
 - (c) nominations may be taken from the floor of the annual general meeting at which the election is to take place if there is an insufficient number of candidates nominated, but if any of the offices of Councillors are not filled by election at the annual general meeting of the Society those Councillors will continue in office until the next annual general meeting.

Vacation of office of Councillor

- 9.4 Subject to the provisions of the Act, the office of a Councillor becomes vacant if:
- (a) the Councillor resigns from the office by notice in writing to the Secretary; or
 - (b) a majority resolution of the Councillors present at a meeting of the Council declares the Councillor has vacated the Councillor's office because the Councillor:
 - (i) is absent without the consent of the Council from three consecutive meetings of the Council;
 - (ii) becomes bankrupt or makes an arrangement or composition with the Councillor's creditors or takes the benefit of any law relating to bankruptcy; or
 - (iii) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health.
- 9.5 In the event of any vacancy occurring in the Council during the year the Council may elect a Member to fill the vacancy and the new member will hold office until the next annual general meeting.
- 9.6 A resolution of the Council declaring that a Councillor has vacated office is conclusive as to the fact and as to the grounds for making the declaration.
- 9.7 There is no right of appeal against a Councillor's removal from office under Rule 9.4(b).

10 Powers and duties of Council

Powers of Council

- 10.1 The business of the Society is to be managed by the Council, who may exercise all such powers of the Society as are not, by the Act or by these Rules, required to be exercised by the Society in general meeting.

General Management

- 10.2 Without limiting the generality of Rule 10.1, the Council may exercise all the powers of the Society to apply, dispose of or invest the funds and income of the Society.

Appointment of solicitor and other officers

- 10.3 The Council may appoint and discharge a solicitor and other officers and agents.

By-laws

- 10.4 The Council may make by-laws consistent with these Rules for the internal management of the business of the Society.

11 Proceedings of the Council

Council meetings

- 11.1 Subject to Rule 11.2 and Rule 11.3, the Councillors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.
- 11.2 The President or two Councillors may at any time, and the Secretary must on the requisition of the President or two Councillors, convene a meeting of the Council.
- 11.3 A meeting of the Council must be held at least once every four months.

Notice of Council meetings

- 11.4 Except in cases of emergency, not less than two days' notice of any meeting of the Council and of the business to be transacted is to be given to the members of the Council in accordance with Rule 15.
- 11.5 The non-receipt of any notice by any Councillor will not invalidate the proceedings of any meeting of the Council.

Questions decided by majority

- 11.6 Questions arising at a meeting of the Council are to be decided by a majority of votes of Councillors involved and voting and any such decision is for all purposes deemed a decision of the Council.

Quorum for Council meeting

- 11.7 At a meeting of the Council, the number of Councillors whose presence is necessary to constitute a quorum is two.

Remaining Councillors may act

- 11.8 If there is a vacancy or vacancies in the office of a Councillor, the remaining Councillor or Councillors may act but, if the number of remaining Councillors is not sufficient to constitute a quorum at a meeting of the Council, they may act only for the purpose of:
- (a) increasing the number of Councillors to a number sufficient to constitute such a quorum; or
 - (b) convening a general meeting of the Society.

Councillors' committees

- 11.9 The Councillors may delegate any of their powers, other than powers required by law to be dealt with by Councillors as a Council, to a committee or committees consisting of at least one of their number and such other persons as they think fit.
- 11.10 A committee to which any powers have been so delegated must exercise the powers delegated in accordance with any directions of the Councillors and a power so exercised is deemed to be exercised by the Councillors.
- 11.11 The members of a committee may elect one of their number as chairman of their meetings. If a meeting of a committee is held and:
- (a) a chairman has not been elected; or
 - (b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act, the members involved may elect one of their number to be chairman of the meeting.
- 11.12 A committee may meet and adjourn as it thinks proper.
- 11.13 Questions arising at a meeting of a committee are to be determined by a majority of votes of the Members involved and voting. The chairman, in addition to the chairman's deliberative vote, has a casting vote.

Use of technology

- 11.14 A meeting of the Council or Councillors' committee may be called or held using any technology consented to by each Councillor. The consent may be a standing one. A Councillor may only withdraw consent within a reasonable period before the meeting.

12 Secretary**Appointment of Secretary**

- 12.1 The Secretary may be:
- (a) a Member of the Society elected by the Society as Secretary;
 - (b) a member of the Society's Council appointed by the Council as Secretary; or

- (c) appointed by the Council as Secretary (whether or not the individual is a Member of the Society).

- 12.2 If the Unincorporated Association did not elect an interim officer as Secretary for the Society before its incorporation, the members of the Council must appoint or elect a Secretary for the Society within one month after incorporation.

Secretary must live in or near Queensland

- 12.3 The Secretary must be an individual residing in Queensland or in another State but not more than 65 kilometres from the Queensland border.

Suspension and removal of Secretary

- 12.4 The Council may suspend or remove a Secretary.

Vacation of office of Secretary

- 12.5 If a vacancy happens in the office of Secretary, the members of the Council must appoint or elect a Secretary within one month after the vacancy happens.

Powers, duties and authorities of Secretary

- 12.6 Subject to the provisions of the Act, the Councillors may vest in a Secretary such powers, duties and authorities as they may from time to time determine and the Secretary must exercise all such powers and authorities subject at all times to the control of the Councillors.

13 Seals

Common seal

- 13.1 The Society must have a common seal.
- 13.2 The Council must provide for the safe custody of the common seal of the Society.

Use of common seal

- 13.3 The common seal may be used only by the authority of the Council, or of a committee of the Councillors authorised by the Councillors to authorise the use of the common seal, and every document to which the common seal is affixed must be signed by a Councillor and be countersigned by another Councillor, a Secretary or another person appointed by the Council to countersign that document or a class of documents in which that document is included.

14 Minutes

Minutes of meetings

- 14.1 The minutes of general meetings and Council meetings are to be entered into a minute book and signed by the chairman of the meeting.

- 14.2 Once signed, the minutes are binding upon the Society and upon every Member and officer.

Minute book open for inspection

- 14.3 The Secretary must ensure that the minute book is open for inspection at all reasonable times by any Member who previously applies to the Secretary for inspection.

15 Notices

Service of notices

- 15.1 The Society may give notice of a meeting to a Member:
- (a) personally;
 - (b) by sending it by post to the address for the Member in the Register of Members or the alternative address (if any) nominated by the Member; or
 - (c) by sending it to the fax number or electronic address (if any) nominated by the Member.
- 15.2 If a notice is sent by post, delivery of the notice is deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and the notice is deemed to have been delivered on the day after the day of its posting.
- 15.3 If a notice is sent by facsimile transmission, delivery of the notice is deemed to be effected by properly addressing the facsimile transmission and transmitting same, and to have been delivered on the day following the despatch.

16 Financial affairs of the Society

Audits and accounts

- 16.1 The Council must cause:
- (a) the accounts of the business of the Society to be kept in accordance with the requirements of the Act;
 - (b) a financial statement for the Society to be prepared in accordance with the requirements of the Act; and
 - (c) the accounts of the Society to be audited in accordance with the requirements of the Act.
- 16.2 The Council must present an audited financial statement to the annual general meeting for adoption.

Funds

- 16.3 The funds of the Society must be kept in the name of the Society in a financial institution decided by the Council.

- 16.4 Proper books and accounts must be kept and maintained either in written or printed form in the English language showing correctly the financial affairs of the Society.
- 16.5 All money must be deposited as soon as possible after receipt.
- 16.6 All amounts of \$100.00 or over are to be paid by cheque signed by any two of the President, Secretary, Treasurer, or other Member authorised from time to time by the Council.
- 16.7 Cheques are to be crossed 'not negotiable' except those in payment of wages, allowances or petty cash recoupments which may be open.
- 16.8 The Council must determine the amount of petty cash which will be kept on the imprest system.
- 16.9 All expenditure must be approved or ratified at a Council meeting.
- 16.10 The income and property of the Society must be used solely in promoting the Society's objects and exercising the Society's powers.

Contracts

- 16.11 Contracts entered into by the Society must be made as follows:
 - (a) a contract which, if made between private persons, would be required by law to be in writing and under seal must be in writing and under the common seal of the Society;
 - (b) a contract which, if made between private persons, would be required by law to be in writing signed by the parties must be in writing signed by any person acting under the express or implied authority of the Society; and
 - (c) a contract which, if made between private persons, would be valid in law although made by verbal agreement, and not reduced into writing, may be made by verbal agreement on behalf of the Society by any person acting under authority of the Society.
- 16.12 All contracts made according to Rule 16.11 are effective in law and bind the Society and its successors and all other parties to the contract, and may be varied or discharged in the manner in which it is authorised to be made.

Authentication of documents

- 16.13 A document or proceeding requiring authentication by the Society may be signed by the Secretary and need not be under its common seal.

Safe custody of documents

- 16.14 The Council must provide for the safe custody of books, documents, instruments of title and securities of the Society.

Financial year

16.15 The financial year of the Society is from 1 October to 30 September.

17 Winding up

Winding up under Part 10 of the Act

17.1 This Rule applies if the Society is wound-up under Part 10 of the Act and there are surplus assets.

Surplus assets must not be distributed to members

17.2 The surplus assets must not be distributed among the Members but must be given to another entity:

- (a) that has objects similar to the Society's objects; and
- (b) the rules of which prohibit the distribution of the entity's income and assets to its members.

17.3 In this Rule: “**surplus assets**” has the meaning given by section 92(3) of the Act.

18 Indemnity

18.1 Every person who is or has been a Councillor, Secretary or any other agent of the Society is indemnified, to the maximum extent permitted by law, out of the property of the Society against any liabilities, including costs and expenses, incurred by that person:

- (a) for anything done by them in the proper or reasonable discharge of their duty; and
- (b) so far as the property and funds of the Society will extend.

19 Insurance

19.1 Immediately on receiving a certification of incorporation under the Act, the members of the Council must ensure the Society takes out insurance in respect of damage to property, death or bodily injury occurring upon the property of the Society for a cover of at least \$1,000,000.00 (or such other amount set by the Act from time to time) and must keep such insurance cover current at all times.

SECTION 7 Notarial Fees

1. Fee scales:

A suggested fee scale was last recommended by the Council to come into operation on 1 January 1997. Since that time, inflation has demanded an increase in fees and, as well, some firms cost their services on a “time” basis and some on an “events” basis. The Council has decided that each member should have the right to set his/her own fee but that it remains important that such a fee have a justification by reference to some widely adopted or accepted scale. Accordingly the Council recommends that members charge for their services by using one of the following:

1. the recommended fee scale prescribed by the Society of Notaries of Victoria appearing on the website of Notary Services Australia; (www.notaryservices.com.au/fees.html)
2. on a time basis prescribed by the Rules of the Supreme Court of Queensland;
3. on a time basis used by the individual practitioner.

SECTION 8 Notarial Forms

Examples of forms in common use in Notarial Practice

Form 1 Formal parts – Certificate for General Purposes

NOTARIAL CERTIFICATE

[CITY e.g. BRISBANE]
QUEENSLAND

TO ALL TO WHOM THESE PRESENTS SHALL COME

I [full name of Notary] of [address]

NOTARY PUBLIC duly authorised admitted and sworn and practising in the City [/ Town] of [name of city/town] in the State of Queensland in the Commonwealth of Australia **DO HEREBY CERTIFY** that

IN FAITH AND TESTIMONY

whereof I have hereunto subscribed my
name and affixed my seal of office at [city / town]
aforesaid this day of
in the year of our Lord Two Thousand and

Notary Public

**Form 3 General Certificate as to execution of documents in the presence of the Notary
(with witnesses)**

[CITY e.g. BRISBANE]
QUEENSLAND

TO ALL TO WHOM THESE PRESENTS SHALL COME

I [full name of Notary] of [address]

NOTARY PUBLIC duly authorised admitted and sworn and practising in the City [/ Town] of [name of city/town] in the State of Queensland in the Commonwealth of Australia **DO HEREBY CERTIFY** that I

was present on the _____ instant

and did see _____ duly sign seal and execute the said

_____ and that the name

thereto subscribed is of the proper handwriting of the

said _____ and that the names

_____ and _____ thereto subscribed as the witnesses thereto

are of the proper handwritings of _____ of

and _____ of _____ the subscribing witnesses thereto.

IN FAITH AND TESTIMONY
whereof etc. (as Form 1)

Form 4 Declaration of Witness to Execution of Document

Oaths Act 1867

**QUEENSLAND
TO WIT**

I _____ of _____
in the State of Queensland in the Commonwealth of Australia **DO SOLEMNLY AND SINCERELY
DECLARE** that I was present on the [date]
together with [name of other witness]
and did see [name of party executing document] duly sign and seal and as [his / her] act and deed deliver the
[describe document] hereunto annexed and the name thereto subscribed is in the proper handwriting of the
said [name of party executing document] **AND** that the name thereto subscribed as the witness (witnesses)
attesting the same is (are) in the proper handwriting of [name of witness(es)]

AND I MAKE this solemn declaration conscientiously believing the same to be true and by virtue of the
provisions of the Oaths Act 1867.

TAKEN AND DECLARED before me,)
at)
this _____ day of _____ 20....)

Before me)

Notary Public

Form 5 Notarial Certificate to Declaration of Witness to Signature of Parties to Document

[CITY e.g. BRISBANE]
QUEENSLAND

TO ALL TO WHOM THESE PRESENTS SHALL COME

I [full name of Notary] of [address]

NOTARY PUBLIC duly authorised admitted and sworn and practising in the City [/ Town] of [name of city/town] in the State of Queensland in the Commonwealth of Australia **DO HEREBY CERTIFY** that on the date hereof personally came and appeared before me

the declarant named and described in the declaration hereto annexed being a person well known and worthy of good credit and by solemn declaration which the said . then made before me

he / she did solemnly and sincerely declare to be true the several matters and things mentioned and contained in the said annexed declaration.

IN FAITH AND TESTIMONY
whereof etc. (as Form 1)

Form 6 Declaration of Witness to the Execution of Document by a Company

Oaths Act 1867

**QUEENSLAND
TO WIT**

I _____ of _____
in the State of Queensland in the Commonwealth of Australia **DO SOLEMNLY AND SINCERELY
DECLARE** that

1. I am the _____ of _____
a company incorporated under the laws in force in the said State and having its registered office at _____

2. I was present on the _____ day of _____ Two thousand and _____ together with _____
Director(s) of the said Company and did see the Common Seal of the
said Company affixed to the _____ hereunto annexed in the presence of the said
_____ and myself as such Director(s) and Secretary of the said Company
respectively.

3. That the Seal fixed to the said _____
is the Common Seal of the said Company.

4. That the Seal has been affixed and the said _____
has been executed in accordance with the Memorandum and Articles of Association of the said
Company.

5. That the signatures “ _____ ” and “ _____ ” subscribed to the said _____ are in the
proper handwriting of the said _____ and myself respectively.

AND I MAKE this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1867.

TAKEN AND DECLARED before me, _____)
at _____)
this _____ day of _____ 20....)

Before me _____)

Notary Public

Form 7 Ship's Protest

[CITY e.g. BRISBANE]
QUEENSLAND

On the _____ day of _____ in the year of our Lord Two thousand
and

personally appeared and presented himself at the office of **[full name of Notary]** of [address], **NOTARY**

PUBLIC

_____ Master of the [Motor Ship *or*] Vessel “ _____ “ registered at the
port of “ _____ “ which sailed on a voyage from [*here set out the first port of loading*] on the . _____ day
of _____ 20

and arrived at the Port of Brisbane via Ports [*if intermediate ports or if only one intermediate port each port
should be named*] on the _____ day of _____ .20 laden with a cargo
of

AND SAYS [*here set out the weather encountered by the vessel*] [*e.g. The vessel met with heavy weather
from time to time during the voyage with gale force winds at times causing the vessel to roll and pitch heavily
and to roll heavily and ship heavy seas on deck. Damage is feared to the vessel and to its cargo machinery
and equipment.*]

AND THE SAID _____ fearing damages **GIVES NOTICE** of his intention of protesting
and causes this note or minute of all and singular the premises to be entered in this Register.

[*The following words are sometimes included at the end of the Protest*] "**AND RESERVES** the right to
extend his Protest at any time and place convenient."

Notary Public
[address]

Master of the Vessel

Form 8 Certified Copy of Ship's Protest

[CITY e.g. BRISBANE]
QUEENSLAND

On the _____ day of _____ in the year of our Lord Two thousand
and

personally appeared and presented himself at the office of **[full name of Notary]** of [address], **NOTARY**

PUBLIC

Master of the [Motor Ship *or*] Vessel “ _____ “ registered at the
port of “ _____ “ which sailed on a voyage from [*here set out the first port of loading*] on the . _____ day
of _____ 20

and arrived at the Port of Brisbane via Ports [*if intermediate ports or if only one intermediate port each port
should be named*] on the _____ day of _____ .20 laden with a cargo
of

AND SAYS [*here set out the weather encountered by the vessel*] **AND THE SAID** **GIVES NOTICE** of his
intention of protesting and causes this note or minute of all and singular the premises to be entered in this
Register.

Notary Public
[address]

Master of the Vessel

TO ALL TO WHOM THESE PRESENTS SHALL COME

I **[full name of Notary]** of [address]

NOTARY PUBLIC duly authorised admitted and sworn and practising in the City [/ Town] of [name of
city/town] in the State of Queensland in the Commonwealth of Australia **DO HEREBY CERTIFY** that the
above type-written matter, purporting to be a copy of the note or minute of the protest of the Master therein
named of the vessel " _____ " dated the _____ day of _____ 20 _____ is a true and correct copy of the
original minute registered in my office with which it has been examined and compared.

IN FAITH AND TESTIMONY
whereof etc. (as Form 1)

Form 9 Extended Ship's Protest

[CITY e.g. BRISBANE]
QUEENSLAND

BY THIS PUBLIC INSTRUMENT OF PROTEST BE IT KNOWN AND MADE MANIFEST UNTO

ALL PEOPLE that on the day of in the year of our Lord Two thousand
and

at in the State of Queensland in the Commonwealth of Australia personally came and appeared
before me [**full name of Notary**] of [address], **NOTARY PUBLIC** duly authorised admitted and sworn and
practising in the City [/ Town] of [name of city/town] in the State of Queensland in the Commonwealth of

Australia the Master and . the Chief Officer and . the Second Officer

and Senior Apprentice and Senior Ordinary Seaman all of the [Motor Ship or]

Vessel “ .” of the burthen of tons net belonging to the Port of

in . of which of is the owner and

are the [*Brisbane*] Agents who did duly and solemnly declare and state as follows that is to

say:

[Here follows the sort of narrative illustrated on the prior pages

The concluding paragraph may be in the following form:]

Oaths Act 1867

**QUEENSLAND
TO WIT**

WE. of

and of

and [*etc.*]

DO SOLEMNLY AND SINCERELY DECLARE that the foregoing statement if correct and contains a true
account of the facts and circumstances:

AND WE MAKE this solemn declaration conscientiously believing the same to be true and by virtue of the
provisions of the Oaths Act 1867.

Master
Chief Officer

Form 11 Note or Minute of the Notation of the Bill

[CITY e.g. BRISBANE]
QUEENSLAND

The _____ day of _____ 20

[Name of Holder of the Bill]

On the _____ day of _____ 20.

at _____ o'clock in the _____ noon the Bill an exact copy of which is set out hereunder *[see note below and Form 12 post]* was at the request of *[here set out the name of the holder of the Bill]* presented by me [or my clerk C.D.] for payment at _____ the office of the drawees _____ of _____

that being the place at which the subject Bill was payable by the said *[here set out name of drawees]*.

I [or my said clerk that is the said C.D.] received from the Manager of *[here set out name of drawees]* the answer " _____ ".

The said Bill is therefore noted for non-payment.

[Signature]
Notary Public
[City / town]
Queensland,
AUSTRALIA.

[Here set out complete copy of Bill]

[A suggested method is to photocopy the Bill onto the reverse of this form and modify the wording above – see Form 12 post]

Form 12 Protest for Non-Acceptance or Non-Payment of the Bill

[CITY e.g. BRISBANE]
QUEENSLAND

On the _____ day of _____ 20.

at the request of *[here set out the name of the holder of the Bill]* bearer of the original Bill of Exchange whereof an exact copy of which is set out hereunder *[Alternative 1: a true copy is on the other side written Alternative 2: A true photocopy of which appears on the other side hereof]*

I, **[full name of Notary]** of [address], **NOTARY PUBLIC** duly authorised admitted and sworn and practising in the City [/ Town] of [name of city/town] in the State of Queensland in the Commonwealth of Australia did cause presentment to be made of the said Bill of Exchange unto _____ the [manager, secretary] of _____ at _____ upon whom the same is drawn and demanded acceptance thereof to which demand the said _____ replied "*[here quote the nature of the reply]*".

THEREFORE I the said Notary at the request aforesaid have protested and by these presents **DO SOLEMNLY PROTEST** as well against the drawer of the said Bill of Exchange as against all others whom it may concern for exchange re-exchange and all costs damages and interest suffered and to be suffered for want of acceptance or payment as the case may be of the said Bill of Exchange. **THUS** protested in the presence of _____ and of _____ Clerks to *(here set out the name of firm by whom the clerks are employed and address of firm)*.

WHICH I ATTEST

Witness

Witness

[Signature]
Notary Public
[City / town]
Queensland,
AUSTRALIA.

[Here set out complete copy of Bill or photocopy the Bill onto the reverse of this form]

Form 13 Notarial Certificate Annexing and Identifying Certificate of Entry in a Register at Queensland Registry of Births, Deaths and Marriages,

[CITY e.g. BRISBANE]
QUEENSLAND

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I [full name of Notary] of [address] **NOTARY PUBLIC** duly authorised admitted and sworn and practising in the City [/ Town] of [name of city/town] in the State of Queensland in the Commonwealth of Australia **DO HEREBY CERTIFY** that the document hereunto annexed and marked with the letter "A" is a Certificate of an Entry in a Register kept at the Queensland Registry of Births, Deaths and Marriages, at Brisbane duly signed and sealed and issued by the Registrar General **AND THAT** to all documents so signed sealed and issued full faith and credit are due in judicature and thereout.

IN FAITH AND TESTIMONY
whereof etc. (as Form 1)

Form 14 Notarial Certificate of a True Copy of a Will and of the Probate

[CITY e.g. BRISBANE]
QUEENSLAND

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I [full name of Notary] of [address]

NOTARY PUBLIC duly authorised admitted and sworn and practising in the City [/ Town] of [name of city/town] in the State of Queensland in the Commonwealth of Australia DO HEREBY CERTIFY that the document hereto annexed and marked with the letter "A" is an Exemplification of the Probate of the last Will and Testament of _____ late of _____ in the State of _____ [Occupation], who died on the _____ day of _____ Two thousand and _____ (such last Will and Testament bearing date the _____ day of _____ in the year _____ of Our Lord One thousand nine hundred and _____) granted by the Supreme Court of Queensland on the _____ day of _____ in the year _____ of Our Lord Two thousand and _____ duly issued from the office of the Probate Division of the said Court and signed by _____ the Registrar thereof and sealed with the Official Seal of the said Court **AND THAT** all documents so signed sealed and issued full faith and credit are due in judicature and thereout

IN FAITH AND TESTIMONY

whereof etc. (as Form 1)

Form 15 Notarial Certificate of Signatures to Power of Attorneys

[CITY e.g. BRISBANE]
QUEENSLAND

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I [full name of Notary] of [address] **NOTARY PUBLIC** duly authorised admitted and sworn and practising in the City [/ Town] of [name of city/town] in the State of Queensland in the Commonwealth of Australia **DO HEREBY CERTIFY** that on the date hereof personally came and appeared before me [names of Grantors] the several persons named in the Power of Attorney hereunto annexed and marked with the letter "A" and in my presence and in the presence of each other, the said [names of Grantors] there and then duly signed sealed and as their act and deed deliver the said Power of Attorney **AND THAT** the names [names of Grantors] subscribed thereto are in the proper handwriting of the said [names of Grantors] respectively and that the names “ ” and “ ” subscribed thereto as attesting witnesses are in the proper handwriting of the said witnesses and of me respectively

IN FAITH AND TESTIMONY
whereof etc. (as Form 1)

Form 16 Notarial Certificate to Power Of Attorney Executed by Australian Company under Common Seal

[CITY e.g. BRISBANE]
QUEENSLAND

TO ALL TO WHOM THESE PRESENTS SHALL COME

I [full name of Notary] of [address] **NOTARY PUBLIC** duly authorised admitted and sworn and practising in the City [/ Town] of [name of city/town] in the State of Queensland in the Commonwealth of Australia

DO HEREBY CERTIFY

that the Power of Attorney hereunto annexed dated the day of Two thousand and was sealed with the Common Seal of the company styled LIMITED (A.C.N.) of [Registered Office] in accordance with its Memorandum and Articles of Association and signed by [Name of Director] and [Name of Director or Secretary or as required by Memorandum and Articles of Association] a director and secretary respectively [or as required] of the said LIMITED and that the signatures “ “. and ” subscribed thereto are of the own true and proper handwriting of the said “ “ and “ “ respectively

AND THAT the said Power of Attorney being so sealed and signed in accordance with the Memorandum and Articles of Association of the said :Limited is duly executed on behalf of and binding on the said Limited in accordance with the provisions of Australian Law relating to companies.

IN FAITH AND TESTIMONY
whereof etc. (as Form 1)

Form 17 Certificate for General Purposes (True Copies)

NOTARIAL CERTIFICATE

I [full name of Notary] of [address]

NOTARY PUBLIC duly authorised admitted and sworn and practising in the City [/ Town] of [name of city/town] in the State of Queensland in the Commonwealth of Australia **HEREBY CERTIFY** that the attached photocopies of [describe document(s)]

[*Optional*: hereunto annexed and marked "A", "B", "C", etc.]

are true photocopies made by me of the original documents produced to me for the purposes of Notarial Certification on this date and signed and sealed by me for the purposes of identification.

[*Another form*: **AND THAT** the documents hereunto annexed and marked with the letters "A", and "B", are true [photo]copies of the Certificate of Registration of the Company Limited (A.C.N.) and the signed Memorandum and Articles of Association of Limited, I having carefully collated and compared the said copies with the said Originals and found the same to agree therewith.]

[*Another form*: are true and faithful copies of original documents now to this Notary produced fair and uncanceled by [Name of Presenter, Address of Presenter] which after careful examination I attest.]

[*Another form*: **AND THAT** to all documents so signed sealed and issued full faith and credit are due in judicature and thereout.]

Dated:

[Signature]

Notary Public

[Address]

[*Optional*: My commission does not expire (*alternatively*, is not limited by time)]

[Seal]

Form 18 Annexure Markings – Various Forms

I have examined the original document and I certify that this is a true photocopy thereof.

Dated:

[Signature]
Notary Public
[Address]

[Seal]

*[In appropriate circumstances
the impressed seal is affixed
without a wafer]*

[Optional:

My commission does not expire (*alternatively*, is not limited by time)]

Alternative:

This is the original Certificate of [Graduation] issued by [Name of issuing organisation] to [Name of Recipient].

Authenticated and certified by me, [Name of Notary], Notary Public

[Date and sign as above]

Alternative:

I certify that this and the preceding [number] ([numeral]) sheets are true photocopies of the within document

Notarised by me this day of 20

[Sign as above]

Form 19 Certificate for General Purposes (Notarial Certification)

NOTARIAL CERTIFICATE

I [full name of Notary] of [address]

NOTARY PUBLIC duly authorised admitted and sworn and practising in the City [/ Town] of [name of city/town] in the State of Queensland in the Commonwealth of Australia **DO HEREBY CERTIFY** that the attached documentation signed and sealed by me for the purposes of identification was on the date hereof produced to me for the purposes of Notarial Certification.

Dated:

[Signature]
Notary Public
[Address]

[Seal]

SECTION 9 Notarial Consumables

LAW STATIONER

Ailsa Davies

9 Yerrinbool Court
Ferry Hills

Tel: 3851 1865

Fax: 3351 6656

Email: jenasrealtypl@optusnet.com.au

The Law Stationer provides a range of self adhesive Notarial Seals (wafers) in various sizes

Seals Notarial	No. 6	37mm
	No. 7	45mm
	No. 8	50mm
	No. 9	57mm
	No. 10	63mm
Legal Seals		16mm

Seals Hot Wax simulated

As well as other legal stationery requirements.