



Electronic Transactions Act 1999

No. 162, 1999



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**An Act to facilitate electronic transactions, and for
other purposes**

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No. 162, 1999

An Act to facilitate electronic transactions, and for other purposes

[Assented to 10 December 1999]

The Parliament of Australia enacts:

Part 1—Introduction

1 Short title

This Act may be cited as the *Electronic Transactions Act 1999*.

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2 Commencement

- (1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.
- (2) If this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

3 Object

The object of this Act is to provide a regulatory framework that:

- (a) recognises the importance of the information economy to the future economic and social prosperity of Australia; and
- (b) facilitates the use of electronic transactions; and
- (c) promotes business and community confidence in the use of electronic transactions; and
- (d) enables business and the community to use electronic communications in their dealings with government.

4 Simplified outline

The following is a simplified outline of this Act:

- For the purposes of a law of the Commonwealth, a transaction is not invalid because it took place by means of one or more electronic communications.
- The following requirements imposed under a law of the Commonwealth can be met in electronic form:
 - (a) a requirement to give information in writing;
 - (b) a requirement to provide a signature;
 - (c) a requirement to produce a document;
 - (d) a requirement to record information;

(e) a requirement to retain a document.

- For the purposes of a law of the Commonwealth, provision is made for determining the time and place of the dispatch and receipt of an electronic communication.
- The purported originator of an electronic communication is bound by it for the purposes of a law of the Commonwealth only if the communication was sent by the purported originator or with the authority of the purported originator.

5 Definitions

(1) In this Act, unless the contrary intention appears:

Commonwealth entity means:

- (a) a Minister; or
- (b) an officer or employee of the Commonwealth; or
- (c) a person who holds or performs the duties of an office under a law of the Commonwealth; or
- (d) an authority of the Commonwealth; or
- (e) an employee of an authority of the Commonwealth.

consent includes consent that can reasonably be inferred from the conduct of the person concerned.

data includes the whole or part of a computer program within the meaning of the *Copyright Act 1968*.

data storage device means any article or material (for example, a disk) from which information is capable of being reproduced, with or without the aid of any other article or device.

electronic communication means:

- (a) a communication of information in the form of data, text or images by means of guided and/or unguided electromagnetic energy; or
- (b) a communication of information in the form of speech by means of guided and/or unguided electromagnetic energy,

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where the speech is processed at its destination by an automated voice recognition system.

information means information in the form of data, text, images or speech.

information system means a system for generating, sending, receiving, storing or otherwise processing electronic communications.

information technology requirements includes software requirements.

non-profit body means a body that is not carried on for the purposes of profit or gain to its individual members and is, by the terms of the body's constitution, prohibited from making any distribution, whether in money, property or otherwise, to its members.

place of business, in relation to a government, an authority of a government or a non-profit body, means a place where any operations or activities are carried out by that government, authority or body.

transaction includes a transaction of a non-commercial nature.

(2) Before 1 July 2001, in this Act (other than this section):

law of the Commonwealth means a law of the Commonwealth specified in the regulations.

6 Crown to be bound

This Act binds the Crown in all its capacities.

7 External Territories

This Act extends to all the external Territories.

Part 2—Application of legal requirements to electronic communications

Division 1—General rule about validity of transactions for the purposes of laws of the Commonwealth

8 Validity of electronic transactions

- (1) For the purposes of a law of the Commonwealth, a transaction is not invalid because it took place wholly or partly by means of one or more electronic communications.
- (2) The general rule in subsection (1) does not apply in relation to the validity of a transaction to the extent to which another, more specific provision of this Part deals with the validity of the transaction.

Exemptions

- (3) The regulations may provide that subsection (1) does not apply to a specified transaction.
- (4) The regulations may provide that subsection (1) does not apply to a specified law of the Commonwealth.

Division 2—Requirements under laws of the Commonwealth

9 Writing

Requirement to give information in writing

- (1) If, under a law of the Commonwealth, a person is required to give information in writing, that requirement is taken to have been met if the person gives the information by means of an electronic communication, where:
 - (a) in all cases—at the time the information was given, it was reasonable to expect that the information would be readily accessible so as to be useable for subsequent reference; and
 - (b) if the information is required to be given to a Commonwealth entity, or to a person acting on behalf of a Commonwealth entity, and the entity requires that the information be given, in accordance with particular information technology requirements, by means of a particular kind of electronic communication—the entity’s requirement has been met; and
 - (c) if the information is required to be given to a Commonwealth entity, or to a person acting on behalf of a Commonwealth entity, and the entity requires that particular action be taken by way of verifying the receipt of the information—the entity’s requirement has been met; and
 - (d) if the information is required to be given to a person who is neither a Commonwealth entity nor a person acting on behalf of a Commonwealth entity—the person to whom the information is required to be given consents to the information being given by way of electronic communication.

Permission to give information in writing

- (2) If, under a law of the Commonwealth, a person is permitted to give information in writing, the person may give the information by means of an electronic communication, where:

- (a) in all cases—at the time the information was given, it was reasonable to expect that the information would be readily accessible so as to be useable for subsequent reference; and
- (b) if the information is permitted to be given to a Commonwealth entity, or to a person acting on behalf of a Commonwealth entity, and the entity requires that the information be given, in accordance with particular information technology requirements, by means of a particular kind of electronic communication—the entity’s requirement has been met; and
- (c) if the information is permitted to be given to a Commonwealth entity, or to a person acting on behalf of a Commonwealth entity, and the entity requires that particular action be taken by way of verifying the receipt of the information—the entity’s requirement has been met; and
- (d) if the information is permitted to be given to a person who is neither a Commonwealth entity nor a person acting on behalf of a Commonwealth entity—the person to whom the information is permitted to be given consents to the information being given by way of electronic communication.

Certain other laws not affected

- (3) This section does not affect the operation of any other law of the Commonwealth that makes provision for or in relation to requiring or permitting information to be given, in accordance with particular information technology requirements:
 - (a) on a particular kind of data storage device; or
 - (b) by means of a particular kind of electronic communication.

Giving information

- (4) This section applies to a requirement or permission to give information, whether the expression *give*, *send* or *serve*, or any other expression, is used.
- (5) For the purposes of this section, *giving information* includes, but is not limited to, the following:
 - (a) making an application;

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- (b) making or lodging a claim;
- (c) giving, sending or serving a notification;
- (d) lodging a return;
- (e) making a request;
- (f) making a declaration;
- (g) lodging or issuing a certificate;
- (h) making, varying or cancelling an election;
- (i) lodging an objection;
- (j) giving a statement of reasons.

Note: Section 13 sets out exemptions from this section.

10 Signature

Requirement for signature

- (1) If, under a law of the Commonwealth, the signature of a person is required, that requirement is taken to have been met in relation to an electronic communication if:
 - (a) in all cases—a method is used to identify the person and to indicate the person’s approval of the information communicated; and
 - (b) in all cases—having regard to all the relevant circumstances at the time the method was used, the method was as reliable as was appropriate for the purposes for which the information was communicated; and
 - (c) if the signature is required to be given to a Commonwealth entity, or to a person acting on behalf of a Commonwealth entity, and the entity requires that the method used as mentioned in paragraph (a) be in accordance with particular information technology requirements—the entity’s requirement has been met; and
 - (d) if the signature is required to be given to a person who is neither a Commonwealth entity nor a person acting on behalf of a Commonwealth entity—the person to whom the signature is required to be given consents to that requirement being met by way of the use of the method mentioned in paragraph (a).

Certain other laws not affected

- (2) This section does not affect the operation of any other law of the Commonwealth that makes provision for or in relation to requiring:
- (a) an electronic communication to contain an electronic signature (however described); or
 - (b) an electronic communication to contain a unique identification in an electronic form; or
 - (c) a particular method to be used in relation to an electronic communication to identify the originator of the communication and to indicate the originator's approval of the information communicated.

Note: Section 13 sets out exemptions from this section.

11 Production of document

Requirement to produce a document

- (1) If, under a law of the Commonwealth, a person is required to produce a document that is in the form of paper, an article or other material, that requirement is taken to have been met if the person produces, by means of an electronic communication, an electronic form of the document, where:
- (a) in all cases—having regard to all the relevant circumstances at the time of the communication, the method of generating the electronic form of the document provided a reliable means of assuring the maintenance of the integrity of the information contained in the document; and
 - (b) in all cases—at the time the communication was sent, it was reasonable to expect that the information contained in the electronic form of the document would be readily accessible so as to be useable for subsequent reference; and
 - (c) if the document is required to be produced to a Commonwealth entity, or to a person acting on behalf of a Commonwealth entity, and the entity requires that an electronic form of the document be produced, in accordance with particular information technology requirements, by means of a particular kind of electronic communication—the entity's requirement has been met; and

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- (d) if the document is required to be produced to a Commonwealth entity, or to a person acting on behalf of a Commonwealth entity, and the entity requires that particular action be taken by way of verifying the receipt of the document—the entity’s requirement has been met; and
- (e) if the document is required to be produced to a person who is neither a Commonwealth entity nor a person acting on behalf of a Commonwealth entity—the person to whom the document is required to be produced consents to the production, by means of an electronic communication, of an electronic form of the document.

Permission to produce a document

- (2) If, under a law of the Commonwealth, a person is permitted to produce a document that is in the form of paper, an article or other material, then, instead of producing the document in that form, the person may produce, by means of an electronic communication, an electronic form of the document, where:
 - (a) in all cases—having regard to all the relevant circumstances at the time of the communication, the method of generating the electronic form of the document provided a reliable means of assuring the maintenance of the integrity of the information contained in the document; and
 - (b) in all cases—at the time the communication was sent, it was reasonable to expect that the information contained in the electronic form of the document would be readily accessible so as to be useable for subsequent reference; and
 - (c) if the document is permitted to be produced to a Commonwealth entity, or to a person acting on behalf of a Commonwealth entity, and the entity requires that an electronic form of the document be produced, in accordance with particular information technology requirements, by means of a particular kind of electronic communication—the entity’s requirement has been met; and
 - (d) if the document is permitted to be produced to a Commonwealth entity, or to a person acting on behalf of a Commonwealth entity, and the entity requires that particular

action be taken by way of verifying the receipt of the document—the entity’s requirement has been met; and

- (e) if the document is permitted to be produced to a person who is neither a Commonwealth entity nor a person acting on behalf of a Commonwealth entity—the person to whom the document is permitted to be produced consents to the production, by means of an electronic communication, of an electronic form of the document.

Integrity of information

- (3) For the purposes of this section, the integrity of information contained in a document is maintained if, and only if, the information has remained complete and unaltered, apart from:
 - (a) the addition of any endorsement; or
 - (b) any immaterial change;which arises in the normal course of communication, storage or display.

Certain other laws not affected

- (4) This section does not affect the operation of any other law of the Commonwealth that makes provision for or in relation to requiring or permitting electronic forms of documents to be produced, in accordance with particular information technology requirements:
 - (a) on a particular kind of data storage device; or
 - (b) by means of a particular kind of electronic communication.

Exemption—migration and citizenship documents

- (5) Schedule 1 has effect.

Copyright

- (6) The following provisions have effect:
 - (a) the generation of an electronic form of a document for the purposes of:
 - (i) this section; or
 - (ii) a law of a State or Territory that corresponds to this section;

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does not constitute an infringement of the copyright in a work or other subject matter embodied in the document.

(b) the production, by means of an electronic communication, of an electronic form of a document for the purposes of:

(i) this section; or

(ii) a law of a State or Territory that corresponds to this section;

does not constitute an infringement of the copyright in a work or other subject matter embodied in the document.

Note: Section 13 sets out exemptions from this section.

12 Retention

Recording of information

(1) If, under a law of the Commonwealth, a person is required to record information in writing, that requirement is taken to have been met if the person records the information in electronic form, where:

(a) in all cases—at the time of the recording of the information, it was reasonable to expect that the information would be readily accessible so as to be useable for subsequent reference; and

(b) if the regulations require that the information be recorded, in electronic form, on a particular kind of data storage device—that requirement has been met.

Retention of written document

(2) If, under a law of the Commonwealth, a person is required to retain, for a particular period, a document that is in the form of paper, an article or other material, that requirement is taken to have been met if the person retains an electronic form of the document throughout that period, where:

(a) in all cases—having regard to all the relevant circumstances at the time of the generation of the electronic form of the document, the method of generating the electronic form of the document provided a reliable means of assuring the

- maintenance of the integrity of the information contained in the document; and
- (b) in all cases—at the time of the generation of the electronic form of the document, it was reasonable to expect that the information contained in the electronic form of the document would be readily accessible so as to be useable for subsequent reference; and
 - (c) if the regulations require that the electronic form of the document be retained on a particular kind of data storage device—that requirement has been met.
- (3) For the purposes of subsection (2), the integrity of information contained in a document is maintained if, and only if, the information has remained complete and unaltered, apart from:
- (a) the addition of any endorsement; or
 - (b) any immaterial change;
- which arises in the normal course of communication, storage or display.

Retention of electronic communications

- (4) If, under a law of the Commonwealth, a person (the **first person**) is required to retain, for a particular period, information that was the subject of an electronic communication, that requirement is taken to be met if the first person retains, or causes another person to retain, in electronic form, the information throughout that period, where:
- (a) in all cases—at the time of commencement of the retention of the information, it was reasonable to expect that the information would be readily accessible so as to be useable for subsequent reference; and
 - (b) in all cases—having regard to all the relevant circumstances at the time of commencement of the retention of the information, the method of retaining the information in electronic form provided a reliable means of assuring the maintenance of the integrity of the information contained in the electronic communication; and
 - (c) in all cases—throughout that period, the first person also retains, or causes the other person to retain, in electronic

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form, such additional information obtained by the first person as is sufficient to enable the identification of the following:

- (i) the origin of the electronic communication;
 - (ii) the destination of the electronic communication;
 - (iii) the time when the electronic communication was sent;
 - (iv) the time when the electronic communication was received; and
- (d) in all cases—at the time of commencement of the retention of the additional information covered by paragraph (c), it was reasonable to expect that the additional information would be readily accessible so as to be useable for subsequent reference; and
- (e) if the regulations require that the information be retained, in electronic form, on a particular kind of data storage device—that requirement is met throughout that period.
- (5) For the purposes of subsection (4), the integrity of information that was the subject of an electronic communication is maintained if, and only if, the information has remained complete and unaltered, apart from:
- (a) the addition of any endorsement; or
 - (b) any immaterial change;
- which arises in the normal course of communication, storage or display.

Copyright

- (6) The generation of an electronic form of a document for the purposes of:
- (a) this section; or
 - (b) a law of a State or Territory that corresponds to this section;
- does not constitute an infringement of the copyright in a work or other subject matter embodied in the document.

Note: Section 13 sets out exemptions from this section.

13 Exemptions from this Division

Exemptions under the regulations

- (1) The regulations may provide that this Division, or a specified provision of this Division, does not apply to a specified requirement.
- (2) The regulations may provide that this Division, or a specified provision of this Division, does not apply to a specified permission.
- (3) The regulations may provide that this Division, or a specified provision of this Division, does not apply to a specified law of the Commonwealth.

Exemptions for courts and tribunals

- (4) This Division does not apply to the practice and procedure of a court or tribunal. For this purpose, ***practice and procedure*** includes all matters in relation to which rules of court may be made.

Evidence Act 1995 etc. not affected

- (5) This Division does not affect the operation of:
 - (a) the *Evidence Act 1995*; or
 - (b) a law of a State or Territory that corresponds to the *Evidence Act 1995*; or
 - (c) a law of a State or Territory, or a rule of common law, that makes provision for the way in which evidence is given in proceedings in a court.

Division 3—Other provisions relating to laws of the Commonwealth

14 Time and place of dispatch and receipt of electronic communications

Time of dispatch

- (1) For the purposes of a law of the Commonwealth, if an electronic communication enters a single information system outside the control of the originator, then, unless otherwise agreed between the originator and the addressee of the electronic communication, the dispatch of the electronic communication occurs when it enters that information system.
- (2) For the purposes of a law of the Commonwealth, if an electronic communication enters successively 2 or more information systems outside the control of the originator, then, unless otherwise agreed between the originator and the addressee of the electronic communication, the dispatch of the electronic communication occurs when it enters the first of those information systems.

Time of receipt

- (3) For the purposes of a law of the Commonwealth, if the addressee of an electronic communication has designated an information system for the purpose of receiving electronic communications, then, unless otherwise agreed between the originator and the addressee of the electronic communication, the time of receipt of the electronic communication is the time when the electronic communication enters that information system.
- (4) For the purposes of a law of the Commonwealth, if the addressee of an electronic communication has not designated an information system for the purpose of receiving electronic communications, then, unless otherwise agreed between the originator and the addressee of the electronic communication, the time of receipt of the electronic communication is the time when the electronic communication comes to the attention of the addressee.

Place of dispatch and receipt

- (5) For the purposes of a law of the Commonwealth, unless otherwise agreed between the originator and the addressee of an electronic communication:
 - (a) the electronic communication is taken to have been dispatched at the place where the originator has its place of business; and
 - (b) the electronic communication is taken to have been received at the place where the addressee has its place of business.
- (6) For the purposes of the application of subsection (5) to an electronic communication:
 - (a) if the originator or addressee has more than one place of business, and one of those places has a closer relationship to the underlying transaction—it is to be assumed that that place of business is the originator’s or addressee’s only place of business; and
 - (b) if the originator or addressee has more than one place of business, but paragraph (a) does not apply—it is to be assumed that the originator’s or addressee’s principal place of business is the originator’s or addressee’s only place of business; and
 - (c) if the originator or addressee does not have a place of business—it is to be assumed that the originator’s or addressee’s place of business is the place where the originator or addressee ordinarily resides.

Exemptions

- (7) The regulations may provide that this section does not apply to a specified electronic communication.
- (8) The regulations may provide that this section does not apply to a specified law of the Commonwealth.

15 Attribution of electronic communications

- (1) For the purposes of a law of the Commonwealth, unless otherwise agreed between the purported originator and the addressee of an

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electronic communication, the purported originator of the electronic communication is bound by that communication only if the communication was sent by the purported originator or with the authority of the purported originator.

- (2) Subsection (1) is not intended to affect the operation of a law (whether written or unwritten) that makes provision for:
- (a) conduct engaged in by a person within the scope of the person's actual or apparent authority to be attributed to another person; or
 - (b) a person to be bound by conduct engaged in by another person within the scope of the other person's actual or apparent authority.

Exemptions

- (3) The regulations may provide that this section does not apply to a specified electronic communication.
- (4) The regulations may provide that this section does not apply to a specified law of the Commonwealth.

Certain provisions of the Evidence Act 1995 etc. not affected

- (5) This section does not affect the operation of:
- (a) section 87 or 88 of the *Evidence Act 1995*; or
 - (b) a law of a State or Territory that corresponds to section 87 or 88 of the *Evidence Act 1995*; or
 - (c) a law of a State or Territory, or a rule of common law, that provides for a statement made by a person to be treated as an admission made by a party to a proceeding in a court.

Part 3—Miscellaneous

16 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Schedule 1—Exemption of migration and citizenship documents from section 11

Note: See subsection 11(5).

1 Exempt migration documents

- (1) Section 11 does not apply to a document required or permitted to be produced in connection with:
 - (a) the operation of a provision of a migration law that relates to:
 - (i) an application for, or the grant of, a visa; or
 - (ii) the cancellation of a visa; or
 - (iii) the deportation of a person; or
 - (b) the application of a migration law to a non-citizen who:
 - (i) does not hold, or is reasonably suspected of not holding, a visa; or
 - (ii) seeks to enter Australia unlawfully, or is reasonably suspected of seeking to enter Australia unlawfully; or
 - (iii) seeks to enter the migration zone unlawfully, or is reasonably suspected of seeking to enter the migration zone unlawfully; or
 - (c) the operation of Division 2, 5, 8 or 11 of Part 2 of the *Migration Act 1958*; or
 - (d) the operation of Division 1.4, 1.4A or 1.4B of Part 1 of the *Migration Regulations 1994*.
- (2) An expression used in paragraph (1)(a) or (b) and in the *Migration Act 1958* has the same meaning in that paragraph as it has in that Act.
- (3) In this clause:

migration law means:

 - (a) the *Migration Act 1958*; or
 - (b) regulations under that Act.

2 Exempt citizenship documents

- (1) Section 11 does not apply to a document required or permitted to be produced in connection with:
- (a) ascertaining whether a person is, or remains, an Australian citizen; or
 - (b) the operation of a provision of a citizenship law that relates to:
 - (i) registration; or
 - (ii) an application for, or the grant of, a certificate of Australian citizenship; or
 - (iii) the inclusion of the name of a child in a certificate of Australian citizenship; or
 - (iv) the amendment, replacement, cancellation or surrender of a certificate of Australian citizenship; or
 - (v) an application for, or the issue of, an evidentiary certificate; or
 - (vi) the cancellation or surrender of an evidentiary certificate; or
 - (vii) the renunciation of Australian citizenship; or
 - (viii) the deprivation of Australian citizenship; or
 - (c) the revocation of a certificate of Australian citizenship; or
 - (d) the operation of a provision of a citizenship law that relates to:
 - (i) an application for, or the issue of, a declaratory certificate of citizenship; or
 - (ii) the return of a declaratory certificate of citizenship; or
 - (iii) the keeping of a register; or
 - (iv) the correction of an entry in a register; or
 - (v) the cancellation of an entry in a register; or
 - (vi) the giving of an extract of an entry in a register; or
 - (vii) the return of an extract of an entry in a register; or
 - (e) the operation of regulation 4 of the Australian Citizenship Regulations.

- (2) An expression used in paragraph (1)(b) or (c) and in the *Australian Citizenship Act 1948* has the same meaning in that paragraph as it has in that Act.
- (3) An expression used in paragraph (1)(d) and in the Australian Citizenship Regulations has the same meaning in that paragraph as it has in those regulations.
- (4) In this clause:
citizenship law means:
 - (a) the *Australian Citizenship Act 1948*; or
 - (b) regulations under that Act.

3 Schedule does not limit section 13

This Schedule does not, by implication, limit section 13 (which deals with exemptions from Division 2 of Part 2).

*[Minister's second reading speech made in—
House of Representatives on 30 June 1999
Senate on 12 October 1999]*

(131/99)
