

EXPLANATORY STATEMENT

Select Legislative Instrument 2013 No. 169

Subject - *Electronic Transactions Act 1999*

Electronic Transactions Amendment (Exemptions) Regulation 2013

Section 16 of the *Electronic Transactions Act 1999* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The objects of the Act include facilitating the use of electronic transactions and enabling business and the community to use electronic communications in their dealings with government. The Act generally provides that if a Commonwealth law requires or permits transactions to be in written form, that requirement is met if the transaction is made in electronic form, unless excluded from the operation of the Act, or particular sections of the Act, in the Regulations.

The *Electronic Transactions Regulations 2000* (the Principal Regulations) currently specify transactions and laws that are exempt from certain provisions of the Act.

To ensure that the exceptions to the operation of the Act remain relevant in light of current and emerging digital channels and consumer preferences, the Regulation repeals several exceptions provided in Schedule 1 to the Principal Regulations. It is clear that government and business practices, as well as consumer behaviours and expectations have evolved since many of the exceptions were introduced. Repealing an exception enables, but does not compel or mandate, the use of electronic communications by business and individuals in their dealings with government.

The Regulation also makes amendments to the Principal Regulations consequential to the changes made by the *Electronic Transactions Amendment Act 2011*. These changes reflect renumbering of the Act and are machinery in nature. They do not alter the existing scope of the exceptions contained in the Principal Regulations.

Details of the Regulation are provided in the Attachment.

Sections 1 to 4, and Schedule 1 to the Regulation which removes a number of exceptions to the operation of the Act, commence on the day after registration. Schedule 2 to the Regulation removes exceptions for the *Insurance Contracts Act 1984* and subordinate legislation and commences on the commencement of Schedule 2 to the *Insurance Contracts Amendment Act 2013*. The Insurance Contracts Amendment Act received Royal Assent on 28 June 2013. Schedule 2 will commence on a single day to be fixed by Proclamation, or the day after six months from Royal Assent.

The Act specifies no conditions that need to be satisfied before the power to make the Regulation may be exercised.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Minute recommends that the Regulation be made in the form proposed.

Authority: Section 16 of the *Electronic Transactions Act 1999*

Details of the *Electronic Transactions Amendment (Exemptions) Regulation 2013*

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Electronic Transactions Amendment (Exemptions) Regulation 2013*.

Section 2 – Commencement

This section provides that sections 1 to 4 and Schedule 1 to the Regulation commence on the day after registration. Schedule 2 to the Regulation commences on the commencement of Schedule 2 to the *Insurance Contracts Amendment Act 2013*.

Section 3 – Authority

This section provides that the Regulation is made under the *Electronic Transactions Act 1999*.

Section 4 – Amendment of *Electronic Transactions Regulations 2000*

This section provides that each instrument specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Electronic Transactions Regulations 2000

Item [1] – Schedule 1 (table items 6, 7, 8, 12, 16, 17, 18, 19, 20, 21, 22 and 23)

This item updates the references to section 14 in items in Schedule 1 to the Principal Regulations to refer to sections 14, 14A and 14B.

Section 14 of the *Electronic Transactions Act 1999* (the Act) previously provided default rules to determine the time of dispatch (paragraph 14(a)), time of receipt (paragraph 14(b)) and the place of dispatch and receipt (paragraph 14(c)). A number of Commonwealth laws and transactions were prescribed in the Principal Regulations to exclude the application of section 14 of the Act. However, the *Electronic Transactions Amendment Act 2011* amended the Act and among other things, renumbered section 14 to provide the default rules to determine the time of dispatch as section 14, the time of receipt as section 14A and the place of dispatch and receipt as section 14B.

This item restores the existing exceptions to accurately reference the provisions of the Act as amended.

Item [2] – Schedule 1 (table item 25, column headed “Commonwealth law”, paragraph e))

The Regulation amends item 25 of the Principal Regulations so that subsections 202A(1), (2), (4) and (5) of the *Commonwealth Electoral Act 1918* (the Electoral Act) are no longer exempt from the operation of the Act. Section 202A of the Electoral Act imposes a requirement on persons to whom the provision applies to sign an undertaking in the approved form before commencing duties in relation to an election. In broad terms, the approved form for the purposes of section 202A of the Electoral Act requires a person to undertake to carry out his or her duties in accordance with the Electoral Act and not to contravene the Electoral Act, for example, by attempting to influence the vote of another person.

The effect of the amendment is that a person may satisfy the requirement under subsections 202A(1), (2), (4) and (5) of the Electoral Act to sign an undertaking in electronic form, in addition to written paper form. This enables the Australian Electoral Commission to deal more efficiently with the estimated 70,000 undertakings that must be given before the 2013 election.

Item [3] – Schedule 1 (table items 25, 26, 27, 28, 29, 30, 31 and 40)

This item updates the references to section 14 in items in Schedule 1 to the Principal Regulations to refer to sections 14, 14A and 14B.

Section 14 of the Act previously provided default rules to determine the time of dispatch (paragraph 14(a)), time of receipt (paragraph 14(b)) and the place of dispatch and receipt (paragraph 14(c)). A number of Commonwealth laws and transactions were prescribed in the Principal Regulations to exclude the application of section 14 of the Act. However, the Electronic Transactions Amendment Act amended the Act and among other things, renumbered section 14 to provide the default rules to determine the time of dispatch as section 14, the time of receipt as section 14A and the place of dispatch and receipt as section 14B.

This item restores the existing exceptions to accurately reference the provisions of the Act as amended.

Item [4] – Schedule 1 (table item 42)

The Regulation repeals the reference in the Principal Regulations to section 27 of the *Disability Services Act 1986* so that transactions under this provision are no longer exempt from the operation of the Act. The provision relates to the power to obtain information in relation to the payment of an allowance, or the liability of a person, to pay an amount to the Commonwealth in relation to the recovery of costs of rehabilitation programs borne by the Commonwealth. The effect of the amendment is that the Secretary may serve notice on a person, in an electronic or written paper form, requiring the production of documents or information. In response to the notice, documents and information may also be provided in electronic form in addition to written paper.

The primary information collection process forms used to collect information and supply financial information, is available, and can be lodged, in both electronic and hard copy

format. The Regulation accommodates changing administrative practices by providing legal validity to the electronic production of required documents.

Item [5] – Schedule 1 (table item 47)

This item updates the references to section 14 in items in Schedule 1 to the Principal Regulations to refer to sections 14, 14A and 14B.

Section 14 of the Act previously provided default rules to determine the time of dispatch (paragraph 14(a)), time of receipt (paragraph 14(b)) and the place of dispatch and receipt (paragraph 14(c)). A number of Commonwealth laws and transactions were prescribed in the Principal Regulations to exclude the application of section 14 of the Act. However, the Electronic Transactions Amendment Act amended the Act and among other things, renumbered section 14 to provide the default rules to determine the time of dispatch as section 14, the time of receipt as section 14A and the place of dispatch and receipt as section 14B.

This item restores the existing exceptions to accurately reference the provisions of the Act as amended.

Item [6] – Schedule 1 (table items 48, 51, 52, 53 and 54A)

This item updates the references to section 14 in items in Schedule 1 to the Principal Regulations to refer to sections 14, 14A and 14B.

Section 14 of the Act previously provided default rules to determine the time of dispatch (paragraph 14(a)), time of receipt (paragraph 14(b)) and the place of dispatch and receipt (paragraph 14(c)). A number of Commonwealth laws and transactions were prescribed in the Principal Regulations to exclude the application of section 14 of the Act. However, the Electronic Transactions Amendment Act amended the Act and among other things, renumbered section 14 to provide the default rules to determine the time of dispatch as section 14, the time of receipt as section 14A and the place of dispatch and receipt as section 14B.

This item restores the existing exceptions to accurately reference the provisions of the Act as amended.

Item [7] – Schedule 1 (table item 56)

This item updates the references to section 14 in items in Schedule 1 to the Principal Regulations to refer to sections 14, 14A and 14B.

Section 14 of the Act previously provided default rules to determine the time of dispatch (paragraph 14(a)), time of receipt (paragraph 14(b)) and the place of dispatch and receipt (paragraph 14(c)). A number of Commonwealth laws and transactions were prescribed in the Principal Regulations to exclude the application of section 14 of the Act. However, the Electronic Transactions Amendment Act amended the Act and among other things, renumbered section 14 to provide the default rules to determine the time of dispatch as section 14, the time of receipt as section 14A and the place of dispatch and receipt as section 14B.

This item restores the existing exceptions to accurately reference the provisions of the Act as amended.

Item [8] – Schedule 1 (table items 57, 64, 65, 66, 67 and 68)

This item updates the references to section 14 in items in Schedule 1 to the Principal Regulations to refer to sections 14, 14A and 14B.

Section 14 of the Act previously provided default rules to determine the time of dispatch (paragraph 14(a)), time of receipt (paragraph 14(b)) and the place of dispatch and receipt (paragraph 14(c)). A number of Commonwealth laws and transactions were prescribed in the Principal Regulations to exclude the application of section 14 of the Act. However, the Electronic Transactions Amendment Act amended the Act and among other things, renumbered section 14 to provide the default rules to determine the time of dispatch as section 14, the time of receipt as section 14A and the place of dispatch and receipt as section 14B.

This item restores the existing exceptions to accurately reference the provisions of the Act as amended.

Item [9] – Schedule 1 (table items 69 and 70)

The Regulation repeals references in the Principal Regulations to the *Insurance (Agents and Brokers) Act 1984* and subordinate legislation made under that Act.

This legislation has been repealed and the exception is no longer necessary.

Item [10] – Schedule 1 (table items 73, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 86A, 92, 93, 94, 95, 96, 97, 98 and 99)

This item updates the references to section 14 in items in Schedule 1 to the Principal Regulations to refer to sections 14, 14A and 14B.

Section 14 of the Act previously provided default rules to determine the time of dispatch (paragraph 14(a)), time of receipt (paragraph 14(b)) and the place of dispatch and receipt (paragraph 14(c)). A number of Commonwealth laws and transactions were prescribed in the Principal Regulations to exclude the application of section 14 of the Act. However, the Electronic Transactions Amendment Act amended the Act and among other things, renumbered section 14 to provide the default rules to determine the time of dispatch as section 14, the time of receipt as section 14A and the place of dispatch and receipt as section 14B.

This item restores the existing exceptions to accurately reference the provisions of the Act as amended.

Item [11] – Schedule 1 (table item 100)

The Regulation repeals references in the Principal Regulations to subsection 77(1) of the *Proceeds of Crime Act 1987*. This provision has been repealed and the exception is no longer necessary.

Item [12] – Schedule 1 (table items 108, 116, 117 and 118)

This item updates the references to section 14 in items in Schedule 1 to the Principal Regulations to refer to sections 14, 14A and 14B.

Section 14 of the Act previously provided default rules to determine the time of dispatch (paragraph 14(a)), time of receipt (paragraph 14(b)) and the place of dispatch and receipt (paragraph 14(c)). A number of Commonwealth laws and transactions were prescribed in the Principal Regulations to exclude the application of section 14 of the Act. However, the Electronic Transactions Amendment Act amended the Act and among other things, renumbered section 14 to provide the default rules to determine the time of dispatch as section 14, the time of receipt as section 14A and the place of dispatch and receipt as section 14B.

This item restores the existing exceptions to accurately reference the provisions of the Act as amended.

Item [13] – Schedule 1 (table item 120, column headed “Commonwealth law”)

The Regulation amends item 120 of the Principal Regulations so that subsections 16A(1), (2), (4) and (5) of the *Referendum (Machinery Provisions) Act 1984* (the Referendum Act) are no longer exempt from the operation of the Act.

Section 16A of the Referendum Act imposes a requirement on persons to whom the provision applies to sign an undertaking in the approved form before commencing duties in relation to a referendum. In broad terms, the approved form for the purposes of section 16A of the Referendum Act requires a person to undertake to carry out his or her duties in accordance with the Electoral Act and not to contravene the Electoral Act, for example, by attempting to influence the vote of another person.

The effect of the amendment is that a person may satisfy the requirement under subsections 16A(1), (2), (4) and (5) of the Referendum Act to sign an undertaking in electronic form, in addition to written paper form. This enables the Australian Electoral Commission to deal more efficiently with the estimated 70,000 undertakings that must be given before the proposed 2013 referendum.

Item [14] – Schedule 1 (table items 120, 121, 122, 123, 124, 125 and 126, column headed “Provisions of the Act”)

This item updates the references to section 14 in items in Schedule 1 to the Principal Regulations to refer to sections 14, 14A and 14B.

Section 14 of the Act previously provided default rules to determine the time of dispatch (paragraph 14(a)), time of receipt (paragraph 14(b)) and the place of dispatch and receipt (paragraph 14(c)). A number of Commonwealth laws and transactions were prescribed in the Principal Regulations to exclude the application of section 14 of the Act. However, the Electronic Transactions Amendment Act amended the Act and among other things, renumbered section 14 to provide the default rules to determine the time of dispatch as

section 14, the time of receipt as section 14A and the place of dispatch and receipt as section 14B.

This item restores the existing exceptions to accurately reference the provisions of the Act as amended.

Item [15] – Schedule 1 (table items 127 and 129)

The Regulation repeals the reference in the Principal Regulations to section 58 of the *Safety, Rehabilitation and Compensation Act 1988* so that transactions under this provision are no longer exempt from the operation of the Act. The provision relates to the power to obtain information in relation to a claim. The effect of the amendment is that a request from the relevant authority seeking information or a copy of a document may be made or given in electronic form in addition to written paper form.

The Regulation also repeals references in the Principal Regulations to sections 67 and 83 and paragraphs 63(2)(a) and 63(2)(b) of the *Seafarers Rehabilitation and Compensation Act 1992* so that transactions under this provision are no longer exempt from the operation of the Act.

Section 67 relates to the power of an employer to obtain information in relation to a claim. The effect of the amendment is that a request from the employer seeking information or a copy of a document may be made or given in electronic form in addition to written paper form.

Section 83 relates to the power of an employer to obtain information in relation to the reconsideration of a determination. The effect of the amendment is that a request from the employer seeking information or a copy of a document may be made or given in electronic form in addition to written paper form.

Paragraphs 63(2)(a) and (b) relate to compensation claims. The effect of the amendment is that a claim and a certificate by a legally qualified medical practitioner (both in accordance with a form approved by the Authority) may be given to the employer in electronic form in addition to written paper form.

Item [16] – Schedule 1 (table items 130 and 131)

This item updates the references to section 14 in items in Schedule 1 to the Principal Regulations to refer to sections 14, 14A and 14B.

Section 14 of the Act previously provided default rules to determine the time of dispatch (paragraph 14(a)), time of receipt (paragraph 14(b)) and the place of dispatch and receipt (paragraph 14(c)). A number of Commonwealth laws and transactions were prescribed in the Principal Regulations to exclude the application of section 14 of the Act. However, the Electronic Transactions Amendment Act amended the Act and among other things, renumbered section 14 to provide the default rules to determine the time of dispatch as section 14, the time of receipt as section 14A and the place of dispatch and receipt as section 14B.

This item restores the existing exceptions to accurately reference the provisions of the Act as amended.

Item [17] – Schedule 1 (table items 136 and 137)

The Regulation repeals references in the Principal Regulations to section 10, subsections 14(1), 22(1), 40(1), 43(1), 44(1), 45(5), and paragraph 38(2)(a) of the *States Grants (Primary and Secondary Education Assistance) Act 2000*. These provisions have been repealed and the exceptions are no longer necessary.

Item [18] – Schedule 1 (table items 138, 139 and 140, column headed “Provisions of the Act”)

This item updates the references to section 14 in items in Schedule 1 to the Principal Regulations to refer to sections 14, 14A and 14B.

Section 14 of the Act previously provided default rules to determine the time of dispatch (paragraph 14(a)), time of receipt (paragraph 14(b)) and the place of dispatch and receipt (paragraph 14(c)). A number of Commonwealth laws and transactions were prescribed in the Principal Regulations to exclude the application of section 14 of the Act. However, the Electronic Transactions Amendment Act amended the Act and among other things, renumbered section 14 to provide the default rules to determine the time of dispatch as section 14, the time of receipt as section 14A and the place of dispatch and receipt as section 14B.

This item restores the existing exceptions to accurately reference the provisions of the Act as amended.

Item [19] – Schedule 1 (table item 141, column headed “Commonwealth law”)

The Regulation repeals references in the Principal Regulations to sections 344 and 345 of the *Student Assistance Act 1973* so that these transactions are no longer exempt from the operation of the Act. These provisions relate to the Secretary’s power to obtain information from a person who owes a debt to the Commonwealth, or about a person who owes a debt to the Commonwealth. The effect of this amendment is that documents and information may be given in electronic form in addition to written paper form in response to a request.

Item [20] – Schedule 1 (table items 142 and 143)

The Regulation amends item 142 of the Principal Regulations so that subsection 20B(1A), paragraph 20B(3A)(b), subsection 29E(6B), subparagraph 29SAA(1)(a)(i), subsection 29SAA(3), sections 29WA and 29WB and subparagraph 387(1)(a)(i) of the *Superannuation Industry (Supervision) Act 1993* (the SIS Act) are no longer exempt from the operation of the Act.

Subsection 20B(1A) and paragraph 20B(3A)(b) of the SIS Act relate to ‘accrued default amounts’. The effect of the amendment is that directions on an investment option under which the asset (or assets) of the fund attributed to the member in relation to the amount is to be invested may be given to a trustee or trustees of a fund in electronic form in addition to written paper form.

Subsection 29E(6B) of the SIS Act provides that Registrable Superannuation Entity (RSE) licensees that apply for authority to offer MySuper products must give effect to the election in section 29SAA of the SIS Act (and certain other elections). This amendment complements the application of the Act to subparagraph 29SAA(1)(a)(i) and subsection 29SAA(3) of the SIS Act (discussed below).

Subparagraph 29SAA(1)(a)(i) and subsection 29SAA(3) of the SIS Act relate to an election to transfer accrued default amounts. The effect of the amendment is that a member may direct the RSE licensee to attribute an amount to another MySuper product or an investment option in electronic form in addition to written paper form, and a RSE licensee may comply with any requirements to give notices to a member of the fund in electronic form in addition to written paper form.

Section 29WA of the SIS Act provides that where a trustee is authorised to offer a MySuper product, contributions made to the fund must be treated as contributions to be paid to a MySuper product in the fund, unless the member has directed the trustee in writing that all or part of their contributions are to be invested in one or more specified investment options. The effect of the amendment is that a member may direct the trustee to invest all or part of their contributions to a specified investment option in electronic form in addition to written paper form.

Section 29WB of the SIS Act provide that where a trustee is authorised to offer a tailored MySuper product for employees of a particular employer, contributions made by the employer for those employees must be paid into that tailored MySuper product unless the employee has directed the trustee in writing that all or part of their contributions are to be invested in one or more specified investment options. The effect of the amendment is that a member may direct the trustee to invest all or part of their contributions to an investment option in electronic form in addition to written paper form.

Subparagraph 387(1)(a)(i) of the SIS Act relates to an election to transfer accrued default amounts. The effect of the amendment is that a member may direct the RSE licensee to attribute an amount to another MySuper product or an investment option in electronic form in addition to written paper form.

The Regulation also amends item 143 of the Principal Regulations so that regulations made under section 390 of the SIS Act, prudential standards made by the Australian Prudential Regulation Authority (APRA) under section 34C of the SIS Act and regulations 9.46 and 9.46A of the *Superannuation Industry (Supervision) Regulations 1994* (the SIS Regulations) are no longer exempt from the operation of the Act.

Section 390 of the SIS Act provides for regulations to be made dealing with transitional, savings and application matters relating to the amendments made by the *Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012*, the *Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Act 2012* and the *Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012*. The effect of the amendment is that all communications undertaken pursuant to these Regulations are subject to the operation of the Act.

Section 34C of the SIS Act provides that APRA may determine Prudential Standards that cover prudential matters. The effect of the amendment is that all communications undertaken

pursuant to the Prudential Standards are subject to the operation of the Act. This includes communications under prudential standards relating to the treatment of accrued default amounts.

Regulation 9.46 of the SIS Regulations relates to notification of an accrued default amount attributed to a MySuper product and is made under subsection 29SAA(3) of the SIS Act. The effect of the amendment is that an RSE licensee may give a member the required written notice of attribution of the accrued default amount or the transfer of the accrued default amount to another fund in electronic form in addition to written paper form.

Regulation 9.46A of the SIS Regulations is also made under subsection 29SAA(3) of the SIS Act and ensures that fund members with identified accrued default amounts are adequately informed by the RSE licensee about their transition to a MySuper product. The effect of the amendment is that the required provision of notices to members with accrued default amounts may be given in electronic form in addition to written paper form.

Item [21] – Schedule 1 (table items 146, 147, 148, 149 and 150, column headed “Provisions of the Act”)

This item updates the references to section 14 in items in Schedule 1 to the Principal Regulations to refer to sections 14, 14A and 14B.

Section 14 of the Act previously provided default rules to determine the time of dispatch (paragraph 14(a)), time of receipt (paragraph 14(b)) and the place of dispatch and receipt (paragraph 14(c)). A number of Commonwealth laws and transactions were prescribed in the Principal Regulations to exclude the application of section 14 of the Act. However, the Electronic Transactions Amendment Act amended the Act and among other things, renumbered section 14 to provide the default rules to determine the time of dispatch as section 14, the time of receipt as section 14A and the place of dispatch and receipt as section 14B.

This item restores the existing exceptions to accurately reference the provisions of the Act as amended.

Item [22] – Schedule 1 (table items 154, 155 and 156)

The Regulation repeals references in the Principal Regulations to sections 86 and 215 and subsections 83BH (4) to (7) of the *Workplace Relations Act 1996* and Divisions 5 and 5A of Part VII, and regulation 131L of the *Workplace Relations Regulations 1996*. These provisions have been repealed and the exceptions are no longer necessary.

Item [23] – Schedule 1 (table item 157)

This item updates the references to section 14 in items in Schedule 1 to the Principal Regulations to refer to sections 14, 14A and 14B.

Section 14 of the Act previously provided default rules to determine the time of dispatch (paragraph 14(a)), time of receipt (paragraph 14(b)) and the place of dispatch and receipt (paragraph 14(c)). A number of Commonwealth laws and transactions were prescribed in the Principal Regulations to exclude the application of section 14 of the Act. However, the

Electronic Transactions Amendment Act amended the Act and among other things, renumbered section 14 to provide the default rules to determine the time of dispatch as section 14, the time of receipt as section 14A and the place of dispatch and receipt as section 14B.

This item restores the existing exceptions to accurately reference the provisions of the Act as amended.

Schedule 2 – Amendments contingent on another Act commencing

Electronic Transactions Regulations 2000

Item [1] – Schedule 1 (table items 71 and 72)

The *Insurance Contracts Amendment Act 2013* (the IC Amendment Act) amends the *Insurance Contracts Act 1984* (the IC Act) to remove impediments to the use of electronic communications for statutory notices and documents.

The Regulation repeals references in the Principal Regulations to the IC Act and subordinate legislation made under the IC Act so that these transactions are no longer exempt from the operation of the Act. The effect of this amendment is that all transactions under the IC Act and subordinate legislation may be made or given in electronic form in addition to written paper form.

The Regulation is consequential to the changes made by the IC Amendment Act and would therefore commence on the commencement of Schedule 2 to that Act.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Electronic Transactions Amendment (Exemptions) Regulation 2013

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Electronic Transactions Act 1999* (the ETA) provides legal validity for transactions that take place wholly or partly by means of one or more electronic communication. It provides a facilitative framework to enable a requirement for a document to be in writing, contain a signature, or be produced or retained, to be met in an electronic form. The ETA also contains default rules to determine the time of receipt of an electronic communication. Schedule 1 of the *Electronic Transactions Regulations 2000* (the ET Regulations) contains an exhaustive list of exceptions to the operation of the ETA, or particular provisions of the ETA.

An initiative of the updated National Digital Economy Strategy (the NDES) is to review the ET Regulations to ensure that exceptions to the operation of the ETA remain relevant in light of current and emerging digital channels and consumer preferences. Consistent with the Digital First Policy, the presumption will be against maintaining exceptions, with a view to minimising the number of exceptions.

The Regulation repeals several exceptions currently provided in Schedule 1 to the Principal Regulations. It is clear that government and business practices, as well as consumer behaviours and expectations have evolved since many of the exceptions were introduced.

Human rights implications

Repealing the exceptions applicable to particular provisions of Commonwealth law enables, but does not compel or mandate, the use of electronic communications by business and individuals in their dealings with government. It will merely allow for a requirement or permission to provide information in writing under a law of the Commonwealth to be fulfilled in electronic form, in addition to written paper form. Therefore, this Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Mark Dreyfus QC
Attorney-General