

# **ELECTRONIC TRANSACTIONS REGULATIONS 2020**

## **EXPLANATORY STATEMENT**

Issued by authority of the Attorney-General

in compliance with section 15J of the *Legislation Act 2003*

### **PURPOSE AND OPERATION OF THE INSTRUMENT**

The *Electronic Transactions Regulations 2020* provide an updated list of Commonwealth laws that are exempt from the *Electronic Transactions Act 1999* (the Act).

The Act facilitates the use of electronic transactions and enables business and the community to use electronic communications in their dealings with the government. Subject to specific requirements that may be contained in the exempted legislation, the effect of an exemption is that requirements for writing, signature, production and retention of documents in that exempted legislation cannot be satisfied by electronic communications.

Section 16 of the Act provides that the Governor-General may make regulations prescribing all matters required or permitted to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 7A(2) of the Act provides that the regulations may provide that all or specified provisions of the Act do not apply to specified laws of the Commonwealth.

The Act ensures that a transaction under a Commonwealth law will not be invalid simply because it was conducted through electronic communication. If a Commonwealth law requires an individual to give information in writing, provide a handwritten signature, produce a document in material form or record or retain information, the Act operates to ensure these things can be done electronically.

The Act is based upon the principles of functional equivalence, which means that paper based commerce and electronic commerce should be treated equally by the law, and technology neutrality, which means that the law should not discriminate between forms of technology. The Act does not remove any legal obligations that may be imposed upon an individual by other Commonwealth laws.

The Act applies to all laws of the Commonwealth unless, pursuant to section 7A of the Act, they are specifically exempted by the regulations or are exempted pursuant to section 7B of the Act. Schedule 1 to the *Electronic Transactions Regulations 2000* contains a list of Commonwealth laws that are exempt from the application of the Act. Exemptions are necessary to account for circumstances where it is not appropriate to provide information, documents or signatures electronically.

The *Electronic Transactions Regulations 2000* sunset on 1 October 2020. The purpose of the *Electronic Transactions Regulations 2020* (the Regulations) is to remake the *Electronic*

*Transactions Regulations 2000* with amendments to ensure that the exemptions to the operation of the Act remain relevant in light of current and emerging digital channels and consumer and business preferences.

The *Electronic Transactions Regulations 2000* contain 147 exemptions. The new Regulations would contain 93 exemptions including (i) existing exemptions that have been maintained with no change, reduced in scope or amended to reflect changes to agency legislation, and (ii) new exemptions that have been requested by government agencies to account for legislative requirements which require these agencies to request hard copy documents.

For example, the Regulations contain a new exemption in relation to subsection 65(3) and section 66 of the *International Criminal Court Act 2002* from sections 9 (provision of information in writing electronically) and 10 (provision of signatures electronically) of the Act. This exemption is necessary because hard copies of warrants, and transcription and certification of witness testimony, are necessary for compliance with the International Criminal Court's admissibility requirements.

The Regulations also contain a number of exemptions that have been amended and/or reduced in scope. For example, a number of exemptions to the *Statutory Declaration Act 1959* have been removed to facilitate the provision of statutory declarations electronically. The new Regulations also contain a number of exemptions that have been remade such as subregulation 4(1) of the *Extradition Regulations 1988* which requires a magistrate or eligible circuit court judge to issue a summons in physical form in order for it to be served on a person.

For legislation administered by the Australian Prudential Regulation Authority (APRA) only specified information gathering provisions are now exempt from the Act. This will enable technology neutral communication between APRA and businesses and individuals that have dealings with APRA. The remaining exemptions are necessary to enable APRA to obtain hard copy materials when APRA needs them to undertake its regulatory functions.

To ensure that the exemptions to the operation of the Act remain relevant in light of current and emerging digital channels and consumer preferences, exemptions are regularly reviewed. Business practices, and consumer behaviours and expectations, have evolved since many of the exemptions were introduced.

Repealing an exemption enables, but does not compel or mandate, the use of electronic communications by business and individuals in their dealings with government.

The Regulations commence on the day after they are registered on the Federal Register of Legislation.

Details of the Regulations are set out in **Attachment A**.

## **CONSULTATION**

Consistent with the requirements of the *Legislation Act 2003*, the proposed Regulations have been informed by consultation with the government agencies that have policy responsibility for the legislation specified in the existing and proposed Regulations. Removal of exemptions facilitates additional avenues of communication with the government and does not prevent people communicating with government agencies through the usual means i.e.

via hard copy correspondence. The addition of new exemptions are needed to reflect existing practice for government agencies that require hard copy communication for the purposes of their legislation. Consultation with non-government stakeholders was not conducted by the Attorney-General's Department as agencies with responsibility for exempted legislation were best placed to review and consult relevant stakeholders.

The following government agencies were consulted by the Attorney-General's Department and are supportive of the proposed amendments:

Department of Agriculture, Water and the Environment	Department of Defence	Department of Education, Skills and Employment
Department of Finance	Department of Foreign Affairs and Trade	Department of Health
Department of Home Affairs	Department of Infrastructure, Transport, Regional Development and Communications;	Department of the Prime Minister and Cabinet
Department of Social Services	Department of Veterans' Affairs	National Indigenous Australians Agency
Services Australia	The Treasury	

## **REGULATION IMPACT STATEMENT**

The Office of Best Practice Regulation assessed the Regulations as having a minor regulatory impact on businesses, community organisations and individuals. As such, a Regulation Impact Statement was not required.

## **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

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

### ***Electronic Transactions Regulations 2020***

This Disallowable 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 Disallowable Legislative Instrument**

The *Electronic Transactions Regulations 2000* sunset on 1 October 2020. The Disallowable Legislative Instrument remakes the *Electronic Transactions Regulations 2000* with amendments to ensure that they remain fit for-purpose, necessary and are in line with current requirements by agencies for provision of information, documents or signatures in hard copy.

The *Electronic Transactions Act 1999* (the Act) legally validates transactions under Commonwealth law that take place wholly or partly by means of one or more electronic communications. This facilitative framework provides that requirements to give information in writing, provide a handwritten signature, produce a document in material form or record or retain information, can be met in an electronic form. The Act applies to all laws of the Commonwealth unless, pursuant to section 7A of the Act, they are specifically exempted by the regulations or are exempted pursuant to section 7B of the Act.

Schedule 1 of the *Electronic Transactions Regulations 2000* contains a list of Commonwealth laws that are exempted from the operation of the Act, or particular provisions of the Act. These exemptions are necessary to account for circumstances where it is not appropriate to provide information, documents or signatures electronically.

The purpose of the *Electronic Transactions Regulations 2020* (the Regulations) is to ensure that the exemptions to the operation of the Act remain relevant in light of current and emerging digital channels and consumer preferences. The exemptions are regularly reviewed to reflect evolving business practices and consumer behaviours.

In addition, the Regulations also make minor technical amendments and remove exemptions in the *Electronic Transactions Regulations 2000* for legislation that is no longer in force.

### **Human rights implications**

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms. The Regulations do not raise human rights issues as the amendments will reduce regulatory impact as far as practicable and increase the certainty and availability of electronic transactions.

Removing the exemptions from the operation of the Act for 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. Removing exemptions merely allows 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.

### **Conclusion**

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

**Section 1- Name**

Section 1 provides that the title of the instrument is the *Electronic Transactions Regulations 2020*.

**Section 2 – Commencement**

This section provides that the Regulations will commence on the day after it is registered on the Federal Register of Legislation.

**Section 3 – Authority**

This section provides that the Regulations are made under the *Electronic Transactions Act 1999*.

**Section 4 – Schedules**

This section outlines that the item specified in Schedule 2 will be amended or repealed as set out in the Schedule.

**Section 5 – Definitions**

This section defines certain terms used in the Regulations.

**Section 6 – Exemptions from the Act**

Schedule 1 specifies provisions of the Act that do not apply to Commonwealth laws.

**Schedule 1 – Laws of the Commonwealth to which certain provisions of the Act do not apply**

This schedule specifies certain laws of the Commonwealth to which provisions of the Act do not apply. Government departments have requested items be exempt from the Act for a number of reasons including (i) agency requirement for original documents to be utilised until appropriate electronic systems are in place, (ii) a requirement for original documents to be produced (for example in legal proceedings), or (iii) in order to provide legal certainty.

**Section 1 – Laws of the Commonwealth to which certain provisions of the Act do not apply**

This section specifies that a provision of the Act specified in column 2 of the table does not apply to the Commonwealth law specified in column 1 of the table. The effect of a Commonwealth law (or particular provisions of a Commonwealth law) being included in column 1 is that the provisions of the Act specified in column 2 will not apply to the specified Commonwealth law.

## **Schedule 2 – Repeals**

### ***Electronic Transactions Regulations 2000***

#### **Section 1 – The whole of the instrument**

This section provides that the *Electronic Transactions Regulations 2000* are repealed.