

# **ELECTRONIC TRANSACTIONS AMENDMENT REGULATIONS 2024**

## **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 Act 1999* (the Act) confirms how electronic methods can be used to complete certain traditionally paper-based transactions which are required or permitted under Commonwealth law, such as writing, making signatures, and producing or retaining documents.

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.

Schedule 1 to the *Electronic Transactions Regulations 2020* (the Principal Regulations) contains the list of Commonwealth laws that are exempt from the application of the Act. A person cannot rely on the Act to use electronic methods to complete the exempted transactions under these laws. Depending on common law or other legislation, these transactions may need to be completed using traditional paper methods.

The purpose of the *Electronic Transactions Amendment Regulations 2024* (the Regulations) is to remove or reduce in scope certain exemptions contained in the Principal Regulations. The Regulations remove two exemptions (at table items 8 and 9 of clause 1 of Schedule 1 to the Principal Regulations) and amend two other exemptions (at table items 19 and 78 of clause 1 of Schedule 1 of the Principal Regulations).

The removal and reduction in scope of current exemptions to the Act will support other amendments and initiatives which relate to legislation administered by the Department of Finance and the Department of Foreign Affairs and Trade.

Specifically, removal of exemptions relating to the *Australian Passports Act 2005* and the *Australian Passports Determination 2015* will facilitate online applications for Australian travel documents, including the submission of digital forms and declarations.

Amendments to the exemptions applying to the *Commonwealth Electoral Act 1918* (Electoral Act) and the *Referendum (Machinery Provisions) Act 1984* (Referendum Act) confirm that the Electoral Commissioner and their delegates may electronically approve determinations, under the Electoral Act and Referendum Act, relating to the locations, dates, and times for the operation of mobile booths and pre-poll voting offices. Further amendments to the exemption applying to the Referendum Act bring the Principal Regulations into consistency with amendments already made to the Referendum Act by the *Referendum (Machinery Provisions) Amendment Act 2023*.

## CONSULTATION

The Regulations remove or reduce exemptions to the Act relating to legislation that is respectively administered by the Department of Finance and the Department of Foreign Affairs and Trade.

Accordingly, consistent with the requirements of the *Legislation Act 2003*, the department consulted with both departments in the development of the Regulations.

## REGULATION IMPACT STATEMENT

The Office of Impact Analysis assessed the Regulations as having no more than a minor regulatory impact on businesses, community organisations and individuals (OIA Reference: OIA24-07611). As such, an Impact Analysis was not required. Details of the Regulation are set out in **Attachment A**.

A Statement of Compatibility with Human Rights is at **Attachment B**.

**Details of the *Electronic Transactions Amendment Regulations 2024***

**Section 1 – Name**

This section provides that the title of the instrument is the *Electronic Transactions Amendment Regulations 2024*.

**Section 2 – Commencement**

This section provides for the Regulations to commence on the day after they are 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 notes that instruments specified in a Schedule to this instrument are amended or repealed as set out, and any other item in a Schedule to this instrument has effect according to its terms.

**Schedule 1 – Amendments**

***Electronic Transactions Regulations 2020***

**Item [1] – Clause 1 of Schedule 1 (table items 8 and 9)**

The 2 above items (which are also extracted below) are repealed from the table in Schedule 1, effecting the removal of those exemptions to the Act.

The effect of removing these exemptions is to subject both the *Australian Passports Act 2005* and the *Australian Passports Determination 2015* to the Act. Application of the Act ensures that transactions made pursuant to the *Australian Passports Act 2005* and the *Australian Passports Determination 2015* are not invalid simply because they were conducted by means of electronic communications. This is intended to facilitate online applications for Australian travel documents, including the submission of digital forms and declarations.

*Exemptions repealed*

<u>Item</u>	<u>Exemption</u>	<u>Parts of the <i>Electronic Transactions Act 1999</i> which do not apply to the listed exemption</u>
8	<i>Australian Passports Act 2005</i>	Subsection 8(1), Division 2 of Part 2 and sections 14, 14A, 14B and 15

9	<i>Australian Passports Determination 2015</i>	Subsection 8(1), Division 2 of Part 2 and sections 14, 14A, 14B and 15
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**Item [2] – Clause 1 of Schedule 1 (table item 19, column 1, paragraph (b))**

This item repeals and substitutes existing paragraph (b) of table item 19, in order to correct a minor typographical error in this paragraph; namely the removal of an errant closed bracket and the inclusion of a required closed bracket.

**Item [3] – Clause 1 of Schedule 1 (table item 19, column 1, paragraph (c))**

This item reduces the scope of the exemption of Part XVA of the *Commonwealth Electoral Act 1918* (the Electoral Act) from the application of the Act. The amendments to the Principal Regulations remove subsections 200BA(1) and (1A) from the exemption and subject those provisions to the application of the Act. These provisions of the Electoral Act concern the Electoral Commissioner’s determination of locations, dates, and times of pre-polling voting offices. Removing these exemptions confirms that the Electoral Commissioner and their delegates may approve these matters electronically pursuant to the Act, without the need to sign the approval notices in hard copy. These amendments do not affect how electors submit their vote: voting remains a paper-based system, including the submission of ballot papers in physical form.

**Item [4] – Clause 1 of Schedule 1 (table item 19, column 1, paragraph (d))**

This item reduces the scope of the exemption of Part XVI of the Electoral Act from the application of the Act. The amendment to the Principal Regulations removes subsection 227(4) from the exemption and subjects this provision to the application of the Act. This provision of the Electoral Act concerns the Electoral Commissioner’s determination of locations, dates, and times of mobile polling. Removing these exemptions enables the Electoral Commissioner and their delegates to approve these matters electronically pursuant to the Act, without the need to sign the approval notices in hard copy. These amendments do not affect how electors submit their vote: voting remains a paper-based system, including the submission of ballot papers in physical form.

**Item [5] – Clause 1 of Schedule 1 (cell at table item 78, column 1)**

This item reduces the scope of the exemption of Parts III, IV and IVA of the *Referendum (Machinery Provisions) Act 1984* (the Referendum Act) from the application of the Act. The amendment to the Principal Regulations removes subsection 51(4), subparagraphs 65(1A)(a)(ii) and (iii) and paragraph 65(1A)(d); and subsections 73AA(1) and (1A)) of the Referendum Act from the exemption and subjects these provisions to the application of the Act.

Applying the Act to subparagraphs 65(1A)(a)(ii) and (iii) and paragraph 65(1A)(d) of the Referendum Act brings the Principal Regulations into consistency with amendments already made to the Referendum Act by the *Referendum (Machinery Provisions) Amendment Act 2023* (the Referendum Amendment Act). The Referendum Amendment Act expressly applied the Act to enable electronic processes for postal votes (see subsection 65(1C) of the Referendum Act as inserted by the Referendum Amendment Act). This provides that an overseas postal voter in a referendum may securely self-certify their Postal Vote Certificate (PVC) by

providing official documented evidence of identity where they are unable to find an “authorised witness”. This change does not allow a postal voter to send electronically their PVC or postal ballot paper: voting itself remains a paper-based process. Removing these exemptions, whilst not strictly necessary given that the Referendum Act already overrides the Principal Regulations, makes navigating exceptions to the Act in the Regulations simpler and more transparent.

The amendment to the Principal Regulations also removes subsections 51(4), 73AA(1) and (1A) of the Referendum Act from the exemption and subjects these provisions to the application of the Act. These provisions of the Referendum Act concern the Electoral Commissioner’s determination of locations, dates, and times for the operation of mobile booths and pre-poll voting offices. Removing these exemptions confirms that the Electoral Commissioner and their delegates may approve these matters electronically pursuant to the Act, without the need to sign the notices in hard copy. These amendments do not affect how electors submit their vote: voting remains a paper-based system, including the submission of ballot papers in physical form.

**Statement of Compatibility with Human Rights**

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

**Electronic Transactions Amendment Regulations 2024**

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 Act 1999* (the Act) confirms how electronic methods can be used to complete certain traditionally paper-based transactions which are required or permitted under Commonwealth law, such as writing, making signatures, and producing or retaining documents.

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. Schedule 1 to the *Electronic Transactions Regulations 2020* (the Principal Regulations) contains the list of Commonwealth laws that are exempt from the application of the Act. A person cannot rely on the Act to use electronic methods to complete the exempted paper-based transactions under these laws. Depending on common law or other legislation, these transactions may need to be completed using traditional paper methods.

The purpose of the *Electronic Transactions Amendment Regulations 2024* (the Regulations) is to remove and reduce in scope certain exemptions contained in the Principal Regulations. The Regulations remove two exemptions (at table items 8 and 9 of clause 1 of Schedule 1 to the Principal Regulations) and amend two other exemptions (at table items 19 and 78 of clause 1 of Schedule 1 of the Principal Regulations).

The removal and reduction in scope of current exemptions to the Act will support other amendments and initiatives which relate to legislation administered by the Department of Finance and the Department of Foreign Affairs and Trade.

Specifically, removal of exemptions relating to the *Australian Passports Act 2005* and the *Australian Passports Determination 2015* will facilitate online applications for Australian travel documents, including the submission of digital forms and declarations.

Amendments to the exemptions applying to the *Commonwealth Electoral Act 1918* (Electoral Act) and the *Referendum (Machinery Provisions) Act 1984* (Referendum Act) confirm that the Electoral Commissioner and their delegates may electronically approve determinations, under the Electoral Act and Referendum Act, relating to the locations, dates, and times for the operation of mobile booths and pre-poll voting offices. Further amendments to the exemption applying to the Referendum Act bring the Principal Regulations into consistency with

amendments already made to the Referendum Act by the *Referendum (Machinery Provisions) Amendment Act 2023*.

### **Human rights implications**

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Removing an exemption from the operation of the Act for particular provisions of Commonwealth law enables, but does not compel or mandate, the use of electronic communications for the purpose of Commonwealth law. It will not itself affect the usability of other methods, like written paper forms, to comply with these laws.

Specifically, the Regulations do not themselves require any person to use electronic communications for the purpose of the affected provisions of the Passports Act, Passports Determination, Electoral Act or Referendum Act. The Regulations only confirm that these processes may be completed by electronic communications pursuant to the Act.

### **Conclusion**

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