

#### Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

#### Overview of Bill

The object of this Bill is to amend the Electronic Transactions Act 2000 to enact the model provisions developed and agreed to by the Standing Committee of Attorneys-General on 7 May 2010. The proposed amendments update the law on electronic transactions to reflect internationally recognised standards in accordance with the United Nations Convention on the Use of Electronic Communications in International Contracts.

The Bill also makes consequential amendments to related legislation.

#### Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

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#### Schedule 1 Amendment of Electronic Transactions

#### Act 2000 No 8

#### Contracts involving electronic communications

Schedule 1 [18] inserts additional provisions (proposed Part 2A, sections 14A–14E) into the Electronic Transactions Act 2000 (the principal Act) that apply to contracts involving electronic communications.

Proposed section 14A provides that the provisions apply to contracts involving electronic communications where the proper law of the contract is the law of New South Wales, whether or not some or all of the parties are located in Australia or elsewhere and whether the contracts are for business, personal or other purposes.

Proposed section 14B provides that a proposal to form a contract made through an electronic communication that is not addressed to a specific party and is generally accessible to parties making use of information systems is to be considered as an invitation to make offers, unless it clearly indicates the intention of the party making the proposal to be bound in case of acceptance.

Proposed section 14C provides that a contract formed by the interaction of an automated message system and a natural person, or by the interaction of automated message systems, is not invalid, void or unenforceable merely because automated message systems were used. Schedule 1 [2] inserts a definition of automated message system.

Proposed section 14D enables a natural person who makes an input error in an electronic communication exchanged with the automated message system of another party to withdraw the portion of the electronic communication in which the input error was made if the person notifies the other party of the error as soon as possible and if the person has not received any material benefit or value from any goods or services received from the other party.

Proposed section 14E deals with the application of the principal Act to certain contracts.

Schedule 1 [1] inserts a summary of these new provisions into the simplified outline of the principal Act.

Schedule 1 [17] is a consequential amendment that transfers provisions relating to courts and electronic case management systems to a new Schedule 1 so that the new provisions for contracts involving electronic communications can be numbered consistently with the equivalent legislation of the Commonwealth and other States and Territories.

#### Time and place of dispatch and receipt of electronic communications

Schedule 1 [15] amends the provisions relating to the time and place of dispatch and

receipt of electronic communications and provides the following default rules:

(a) the time of dispatch of an electronic communication is the time when the electronic communication leaves an information system,

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(b) the time of receipt of an electronic communication is the time when the electronic communication becomes capable of being retrieved by the addressee at an electronic address designated by the addressee,

(c) an electronic communication is taken to have been dispatched at the place where the originator has its place of business,

(d) an electronic communication is taken to have been received at the place where the addressee has its place of business.

Schedule 1 [3] updates the definition of place of business for the purposes of these provisions to include a place where a person maintains a non-transitory establishment to pursue an economic activity other than the temporary provision of goods or services out of a specific location. Under the amendments, a party's place of business is assumed to be the location indicated by the party, unless another party demonstrates that the party making the indication does not have a place of business at that location. If a party has not indicated a place of business and has multiple places of business, the place of business is that which has the closest relationship to the underlying transaction. A location is not a place of business merely because that is where the equipment and technology supporting an information system used by a party are located.

Schedule 1 [2] inserts definitions of addressee and originator for the purposes of these provisions.

Other amendments

Currently, the requirement for a signature of a person is met in an electronic communication if a method is used to identify the person and to indicate the person's approval of the information communicated. Schedule 1 [7] and [9] provide that rather than indicating the person's approval of the information, it is sufficient that the signature in the electronic communication indicates the person's intention in respect of the information communicated. Schedule 1 [10] is a related amendment.

Schedule 1 [8] makes it clear that whether or not a signature in an electronic communication is reliable should be decided in light of all the circumstances, including any relevant agreement, to prevent a party to a transaction from repudiating its signature in bad faith.

Schedule 1 [3] extends the definition of transaction to include any statement, declaration, demand, notice or request, including an offer and the acceptance of an offer, that the parties are required to make or choose to make in connection with the formation or performance of a contract, agreement or other arrangement.

Schedule 1 [4] extends the regulation-making powers in the principal Act so that regulations may be made to exempt certain transactions, electronic communications and other matters from all or specified provisions of the principal Act and to provide that all or specified provisions of the principal Act do not apply to specified laws of

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New South Wales. Schedule 1 [5], [14] and [16] omit regulation-making powers that are now included in this new provision. Schedule 1 [6] and [11]–[13] are consequential amendments.

Schedule 1 [19] contains transitional provisions.

Schedule 2 Consequential amendments to other legislation

Schedule 2.1 and 2.2 update cross-references to the principal Act in the Electronic Transactions Regulation 2007 and the Electronic Transactions (ECM Courts) Order 2005 as a consequence of Schedule 1 [17], which transfers existing Part 2A to new Schedule 1.