

First print



New South Wales

Electronic Transactions Bill 2000

Explanatory note

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

Overview of Bill

The object of this Bill is to enact legislation complementary with the *Electronic Transactions Act 1999* of the Commonwealth and, by so doing, to ensure that the law of New South Wales in relation to certain matters concerning electronic transactions is consistent with the law of the Commonwealth in relation to those matters.

Outline of provisions

Part 1 Preliminary

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 fixed by proclamation.

Clause 3 sets out the object of the proposed Act, which 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.

Clause 4 sets out a simplified outline of the proposed Act in the following terms:

- (a) For the purposes of a law of the State, a transaction is not invalid because it took place by means of one or more electronic communications.
- (b) The following requirements imposed under a law of the State can generally be met in electronic form:
 - (i) a requirement to give information in writing,
 - (ii) a requirement to provide a signature,
 - (iii) a requirement to produce a document,
 - (iv) a requirement to record information,
 - (v) a requirement to retain a document.
- (c) For the purposes of a law of the State, provision is made for determining the time and place of the dispatch and receipt of an electronic communication.
- (d) The purported originator of an electronic communication is bound by it for the purposes of a law of the State only if the communication was sent by the purported originator or with the authority of the purported originator.

Clause 5 defines certain words and expressions used in the proposed Act, of which the more significant are *electronic communication*, *information*, *information system* and *transaction*.

Clause 6 provides that the proposed Act is to bind the Crown.

Part 2 Application of legal requirements to electronic communications

Division 1 General rule about validity of transactions for the purposes of laws of this jurisdiction

Clause 7 sets out a general rule to the effect that, for the purposes of a law of the State, a transaction is not invalid because it took place wholly or partly by means of one or more electronic communications. The general rule is expressed to be subject to other provisions of the proposed Act that deal with the validity of transactions. The regulations under the proposed Act are to be able to exclude the general rule in relation to specified transactions and specified laws of the State.

Division 2 Requirements under laws of this jurisdiction

Clause 8 provides that a person who, under a law of the State, is required or permitted to give information in writing may instead give that information by means of an electronic communication. Generally speaking, for information given by means of an electronic communication to be acceptable:

- (a) it must be reasonable to expect that the information will continue to be accessible for future reference, and
- (b) the recipient of the information must consent to being given information by means of an electronic communication.

Clause 9 provides that a person who, under a law of the State, is required to give a signature may instead use an alternative means of authenticating the person's identity in relation to an electronic communication of information. Generally speaking, for an alternative means of authentication to be acceptable:

- (a) those means must identify the person and indicate the person's approval of the information being communicated, and
- (b) those means must be as reliable as is appropriate for the purposes for which the information is communicated, and
- (c) the recipient of the information must consent to the use of those means.

Clause 10 provides that a person who, under a law of the State, is required or permitted to produce a document in hard copy may instead produce the document in electronic form. Generally speaking, for an electronic document to be acceptable:

- (a) the method of generating an electronic document must provide a reliable means of assuring that the integrity of the information contained in the document is maintained, and
- (b) it must be reasonable to expect that the information contained in the electronic document will continue to be accessible for future reference, and
- (c) the recipient of the document must consent to being given an electronic document.

Clause 11 provides that a person who, under a law of the State, is required to record information in writing, to retain a document in hard copy or to retain information the subject of an electronic communication, may record or retain the information in electronic form. Generally speaking, for an electronic form of recording or retaining information to be acceptable:

- (a) it must be reasonable to expect that the information will continue to be accessible for future reference, and
- (b) the method for storing the information must comply with any requirements of the regulations under the proposed Act as to the kind of data storage device on which the information is to be stored, and
- (c) in the case of a document that is required to be retained:
 - (i) additional information as to the origin and destination of the communication, and as to the time that the electronic communication was sent and received, are to be retained, and
 - (ii) the method for retaining information must provide a reliable means of assuring that the integrity of the information is maintained.

Clause 12 enables the regulations under the proposed Act to provide that the proposed Division, or a specified provision of the proposed Division, does not apply to a specified requirement, a specified permission or a specified law of the State.

Division 3 Other provisions relating to laws of this jurisdiction

Clause 13 establishes default rules in relation to the time and place of dispatch and receipt of electronic communications. Generally speaking:

- (a) an electronic communication is taken to have been dispatched by the person by whom it is originated when it first enters an information system outside the control of the originator, and

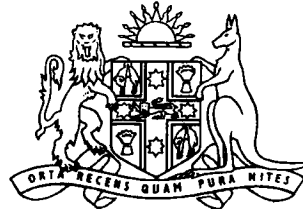
- (b) an electronic communication is taken to have been received by the person to whom it is addressed when it enters an information system designated by the addressee for that purpose or (if no such system is designated) when it comes to the attention of the addressee, and
- (c) an electronic communication is taken to have been dispatched at the place where the originator has its place of business and to have been received at the place where the addressee has its place of business.

The regulations under the proposed Act are to be able to exclude the proposed section in relation to specified electronic communications and specified laws of the State.

Clause 14 sets out the circumstances in which the person by whom an electronic communication purports to have been originated is bound by the communication. Generally speaking, the person is not bound by the communication unless the communication was sent by, or with the authority of, the person. The regulations under the proposed Act are to be able to exclude the proposed section in relation to specified electronic communications and specified laws of the State.

Part 3 Miscellaneous

Clause 15 empowers the Governor to make regulations under the proposed Act.



New South Wales

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New South Wales

Electronic Transactions Bill 2000

No. , 2000

A Bill for

An Act to facilitate electronic transactions; and for other purposes.

The Legislature of New South Wales enacts: 1

Part 1 Preliminary 2

1 Name of Act 3

This Act is the *Electronic Transactions Act 2000*. 4

2 Commencement 5

This Act commences on a day or days to be fixed by proclamation. 6

3 Object 7

The object of this Act is to provide a regulatory framework that: 8

- (a) recognises the importance of the information economy to the future economic and social prosperity of Australia, and 9
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- (b) facilitates the use of electronic transactions, and 11
- (c) promotes business and community confidence in the use of electronic transactions, and 12
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- (d) enables business and the community to use electronic communications in their dealings with government. 14
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4 Simplified outline 16

The following is a simplified outline of this Act: 17

- (a) For the purposes of a law of this jurisdiction, a transaction is not invalid because it took place by means of one or more electronic communications. 18
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- (b) The following requirements imposed under a law of this jurisdiction can generally be met in electronic form: 21
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 - (i) a requirement to give information in writing, 23
 - (ii) a requirement to provide a signature, 24
 - (iii) a requirement to produce a document, 25
 - (iv) a requirement to record information, 26
 - (v) a requirement to retain a document. 27
- (c) For the purposes of a law of this jurisdiction, provision is made for determining the time and place of the dispatch and receipt of an electronic communication. 28
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- (d) The purported originator of an electronic communication is bound by it for the purposes of a law of this jurisdiction only if the communication was sent by the purported originator or with the authority of the purported originator.

5 Interpretation

- (1) In this Act:

consent includes consent that can reasonably be inferred from the conduct of the person concerned, but does not include consent given subject to conditions unless the conditions are complied with.

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

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 or unguided electromagnetic energy, or both, or

- (b) a communication of information in the form of sound by means of guided or unguided electromagnetic energy, or both, where the sound is processed at its destination by an automated voice recognition system.

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

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

information technology requirements includes software requirements.

law of this jurisdiction means any law in force in this jurisdiction, whether written or unwritten, but does not include a law of the Commonwealth.

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.

Clause 5 Electronic Transactions Bill 2000

Part 1 Preliminary

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. 1
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this jurisdiction means New South Wales. 4

transaction includes any transaction in the nature of a contract, agreement or other arrangement, and also includes any transaction of a non-commercial nature. 5
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(2) Notes in the text of this Act do not form part of this Act. 8

6 Crown to be bound 9

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities. 10
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Part 2	Application of legal requirements to electronic communications	1
		2
Division 1	General rule about validity of transactions for the purposes of laws of this jurisdiction	3
		4
7	Validity of electronic transactions	5
(1)	For the purposes of a law of this jurisdiction, a transaction is not invalid because it took place wholly or partly by means of one or more electronic communications.	6
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(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.	9
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(3)	The regulations may provide that subsection (1) does not apply to a specified transaction or specified class of transactions.	12
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(4)	The regulations may provide that subsection (1) does not apply to a specified law of this jurisdiction.	14
		15
Division 2	Requirements under laws of this jurisdiction	16
8	Writing	17
(1)	If, under a law of this jurisdiction, 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:	18
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(a)	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	22
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(b)	the person to whom the information is required to be given consents to the information being given by means of an electronic communication.	25
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- (2) If, under a law of this jurisdiction, a person is permitted to give information in writing, the person may give the information by means of an electronic communication, where: 1
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- (a) 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 4
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- (b) the person to whom the information is permitted to be given consents to the information being given by means of an electronic communication. 7
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- (3) This section does not affect the operation of any other law of this jurisdiction that makes provision for or in relation to requiring or permitting information to be given, in accordance with particular information technology requirements: 10
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- (a) on a particular kind of data storage device, or 14
- (b) by means of a particular kind of electronic communication. 15
- (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. 16
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- (5) For the purposes of this section, *giving information* includes, but is not limited to, the following: 19
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- (a) making an application, 21
- (b) making or lodging a claim, 22
- (c) giving, sending or serving a notification, 23
- (d) lodging a return, 24
- (e) making a request, 25
- (f) making a declaration, 26
- (g) lodging or issuing a certificate, 27
- (h) making, varying or cancelling an election, 28
- (i) lodging an objection, 29
- (j) giving a statement of reasons. 30
- Note.** Section 12 sets out exemptions from this section. 31

9 Signatures

- (1) If, under a law of this jurisdiction, the signature of a person is required, that requirement is taken to have been met in relation to an electronic communication if:
- (a) a method is used to identify the person and to indicate the person's approval of the information communicated, and
 - (b) 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) 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).
- (2) This section does not affect the operation of any other law of this jurisdiction 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 12 sets out exemptions from this section.

10 Production of document

- (1) If, under a law of this jurisdiction, 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) having regard to all the relevant circumstances at the time the communication was sent, 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) 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	1 2
(c) 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.	3 4 5
(2) If, under a law of this jurisdiction, 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:	6 7 8 9 10
(a) having regard to all the relevant circumstances at the time the communication was sent, 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	11 12 13 14 15
(b) 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	16 17 18 19
(c) 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.	20 21 22
(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:	23 24 25
(a) the addition of any endorsement, or	26
(b) any immaterial change,	27
which arises in the normal course of communication, storage or display.	28 29
(4) This section does not affect the operation of any other law of this jurisdiction 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:	30 31 32 33
(a) on a particular kind of data storage device, or	34
(b) by means of a particular kind of electronic communication.	35
Note. Section 12 sets out exemptions from this section.	36

11 Retention of information and documents	1
(1) If, under a law of this jurisdiction, 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:	2
(a) 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	3
(b) if the regulations require that the information be recorded on a particular kind of data storage device—that requirement has been met.	4
(2) If, under a law of this jurisdiction, 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, or causes another person to retain, an electronic form of the document throughout that period, where:	5
(a) 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	6
(b) 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	7
(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 throughout that period.	8
(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:	9
(a) the addition of any endorsement, or	10
(b) any immaterial change,	11
which arises in the normal course of communication, storage or display.	12
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- (4) If, under a law of this jurisdiction, 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 have been met if the first person retains, or causes another person to retain, in electronic form, the information throughout that period, where:
- (a) 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) 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) throughout that period, the first person also retains, or causes the other person to retain, in electronic 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) 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 on a particular kind of data storage device—that requirement has been 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. 1
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Note. Section 12 sets out exemptions from this section. 3

12 Exemptions from this Division 4

(1) The regulations may provide that this Division, or a specified provision of this Division, does not apply to a specified requirement or specified class of requirements. 5
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(2) The regulations may provide that this Division, or a specified provision of this Division, does not apply to a specified permission or specified class of permissions. 8
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(3) The regulations may provide that this Division, or a specified provision of this Division, does not apply to a specified law of this jurisdiction. 11
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Division 3 Other provisions relating to laws of this jurisdiction 13 14

13 Time and place of dispatch and receipt of electronic communications 15

(1) For the purposes of a law of this jurisdiction, 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. 16
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(2) For the purposes of a law of this jurisdiction, 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. 22
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(3) For the purposes of a law of this jurisdiction, 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. 28
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Clause 13 Electronic Transactions Bill 2000

Part 2 Application of legal requirements to electronic communications

Division 3 Other provisions relating to laws of this jurisdiction

- (4) For the purposes of a law of this jurisdiction, 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. 1
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- (5) For the purposes of a law of this jurisdiction, unless otherwise agreed between the originator and the addressee of an electronic communication: 8
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 - (a) the electronic communication is taken to have been dispatched from the originator's place of business, and 11
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 - (b) the electronic communication is taken to have been received at the addressee's place of business. 13
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- (6) For the purposes of the application of subsection (5) to an electronic communication: 15
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 - (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 17
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 - (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 22
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 - (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. 26
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- (7) The regulations may provide that this section does not apply to a specified electronic communication or specified class of electronic communications. 30
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- (8) The regulations may provide that this section does not apply to a specified law of this jurisdiction. 33
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14 Attribution of electronic communications	1
(1) For the purposes of a law of this jurisdiction, unless otherwise agreed between the purported originator and the addressee of an 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 3 4 5 6 7
(2) Subsection (1) does not affect the operation of a law of this jurisdiction that makes provision for:	8 9
(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	10 11 12
(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.	13 14 15
(3) The regulations may provide that this section does not apply to a specified electronic communication or specified class of electronic communications.	16 17 18
(4) The regulations may provide that this section does not apply to a specified law of this jurisdiction.	19 20

Clause 15 Electronic Transactions Bill 2000

Part 3 Miscellaneous

Part 3 Miscellaneous 1

15 Regulations 2

The Governor may make regulations, not inconsistent with this Act, for 3
or with respect to any matter that by this Act is required or permitted 4
to be prescribed or that is necessary or convenient to be prescribed for 5
carrying out or giving effect to this Act. 6