

2000

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Electronic Transactions Bill 2000

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2000

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(As presented)

(Attorney-General)

Electronic Transactions Bill 2000

A BILL

FOR

**An Act to facilitate the use of electronic methods in
transactions and record-keeping**

The Legislative Assembly for the Australian Capital Territory
enacts as follows:

PART 1—PRELIMINARY

1 Name of Act

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

2 Commencement

This Act commences on a day fixed by the Minister by notice in the Gazette.

5 *Note 1* The provisions of an Act providing for its name and commencement automatically commence on the date of notification of the Act (see *Interpretation Act 1967*, s 10B).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see *Interpretation Act 1967*, s 10C (1)).

10 *Note 3* If a provision has not commenced within 6 months beginning on the date of notification of the Act, it automatically commences on the first day after that period (see *Interpretation Act 1967*, s 10E (2)).

3 Object

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

- 15 (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
- 20 (d) enables business and the community to use electronic communications in their dealings with government.

4 Simplified outline

The following is a simplified outline of this Act:

- 25 (a) for a law of this jurisdiction, a transaction is not invalid because it took place by means of 1 or more electronic communications;
- (b) the following requirements imposed under a law of this jurisdiction 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;
- 30 (iv) a requirement to record information;
- (v) a requirement to retain a document;

- (c) for a law of this jurisdiction, 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 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

In this Act:

10 **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.

15 **data** includes all or part of a computer program within the meaning of the *Copyright Act 1968* (Cwlth).

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—

20 (a) a communication of information in the form of data, text or images by means of guided or unguided electromagnetic energy, or both; or

25 (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.

30 **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 a law of the Territory.

non-profit body means a body that is not carried on for 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.

5 ***place of business***, for 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.

this jurisdiction means the Territory.

10 ***transaction*** includes any contract, agreement or other arrangement, whether or not of a commercial kind.

6 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See *Interpretation Act 1967*, s 12 (1), (4) and (5) for the legal status of notes.

PART 2—APPLICATION OF LEGAL REQUIREMENTS TO ELECTRONIC COMMUNICATIONS

Division 2.1—General rule about validity of transactions for laws of this jurisdiction

5 7 Validity of electronic transactions

- (1) For a law of this jurisdiction, a transaction is not invalid because it took place wholly or partly by means of 1 or more electronic communications.
- 10 (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.
- (3) The regulations may provide that subsection (1) does not apply to a stated transaction or stated class of transactions.
- 15 (4) The regulations may provide that subsection (1) does not apply to a stated law of this jurisdiction.

Division 2.2—Requirements under laws of this jurisdiction

8 Writing

- (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—
- 20 (a) the person gives the information by means of an electronic communication; and
- (b) 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
- 25 (c) the person to whom the information is required to be given consents to the information being given by means of an electronic communication.
- (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
- 30 electronic communication if—

- (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
- 5 (b) the person to whom the information is permitted to be given consents to the information being given by means of an electronic communication.

(3) This section does not affect the operation of any other law of this jurisdiction that provides for or in relation to requiring or permitting information to be given, in accordance with particular information
10 technology requirements—

- (a) on a particular kind of data storage device; or
- (b) by means of a particular kind of electronic communication.

(4) This section applies to a requirement or permission to give information, whether the expression give, send or serve, or any other
15 expression, is used.

(5) For this section, giving information includes, but is not limited to, the following:

- (a) making an application;
- (b) making or lodging a claim;
- 20 (c) giving, sending or serving a notification;
- (d) lodging a return;
- (e) making a request;
- (f) making a declaration;
- (g) lodging or issuing a certificate;
- 25 (h) making, varying or cancelling an election;
- (i) lodging an objection;
- (j) giving a statement of reasons.

Note Section 12 sets out exemptions from this section.

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 for an electronic communication if—

- 5 (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;
- 10 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 provides for or in relation to requiring—

- 15 (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
- 20 (c) a particular method to be used for 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

25 (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—

- (a) the person produces, by means of an electronic communication, an electronic form of the document; and
- 30 (b) 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

5 (c) 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

(d) 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.

10 (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 if—

15 (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

20 (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

25 (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.

(3) For 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—

30 (a) the addition of any endorsement; or

(b) any immaterial change;

which arises in the normal course of communication, storage or display.

(4) This section does not affect the operation of any other law of this jurisdiction that provides for or in relation to requiring or permitting

electronic forms of documents to be produced, in accordance with particular information technology requirements—

- (a) on a particular kind of data storage device; or
- (b) by means of a particular kind of electronic communication.

5 *Note* Section 12 sets out exemptions from this section.

11 Retention of information and documents

(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—

- (a) the person records the information in electronic form; and
- 10 (b) 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
- (c) if the regulations require that the information be recorded on a particular kind of data storage device—that requirement has been
- 15 met.

(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—

- (a) the person retains, or causes another person to retain, an electronic
- 20 form of the document throughout that period; and
- (b) 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
- 25 information contained in the document; and
- (c) 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
- 30 (d) 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.

(3) For 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—

(a) the addition of any endorsement; or

5 (b) any immaterial change;

which arises in the normal course of communication, storage or display.

(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
10 if—

(a) the first person retains, or causes another person to retain, in electronic form, the information throughout that period; and

15 (b) 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

(c) 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
20 information contained in the electronic communication; and

(d) 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:

25 (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

30 (e) 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

(f) 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 (5) For 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.

10 *Note* Section 12 sets out exemptions from this section.

12 Exemptions from this Division

(1) The regulations may provide that this Division, or a stated provision of this Division, does not apply to a stated requirement or stated class of requirements.

15 (2) The regulations may provide that this Division, or a stated provision of this Division, does not apply to a stated permission or stated class of permissions.

(3) The regulations may provide that this Division, or a stated provision of this Division, does not apply to a stated law of this jurisdiction.

20 *Division 2.3—Other provisions relating to laws of this jurisdiction*

13 Time and place of dispatch and receipt of electronic communications

25 (1) For 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.

30 (2) For 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.

(3) For 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,
5 the time of receipt of the electronic communication is the time when the electronic communication enters that information system.

(4) For 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
10 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.

(5) For a law of this jurisdiction, unless otherwise agreed between the originator and the addressee of an electronic communication—

15 (a) the electronic communication is taken to have been dispatched from the originator's place of business; and

(b) the electronic communication is taken to have been received at the addressee's place of business.

(6) For the application of subsection (5) to an electronic
20 communication—

(a) if the originator or addressee has more than 1 place of business, and 1 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

25 (b) if the originator or addressee has more than 1 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

30 (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.

(7) The regulations may provide that this section does not apply to a stated electronic communication or stated class of electronic
35 communications.

(8) The regulations may provide that this section does not apply to a stated law of this jurisdiction.

14 Attribution of electronic communications

5 (1) For 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.

10 (2) Subsection (1) does not affect the operation of a law of this jurisdiction that provides for—

(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

(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.

15 (3) The regulations may provide that this section does not apply to a stated electronic communication or stated class of electronic communications.

(4) The regulations may provide that this section does not apply to a stated law of this jurisdiction.

20 Division 2.4—Miscellaneous

15 Regulation-making power

The Executive may make regulations for this Act.