

2012

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Electronic Transactions Amendment Bill 2012

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(As presented)

(Attorney-General)

Electronic Transactions Amendment Bill 2012

A Bill for

An Act to amend the *Electronic Transactions Act 2001*

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

J2011-761

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 **1 Name of Act**

2 This Act is the *Electronic Transactions Amendment Act 2012*.

3 **2 Commencement**

4 This Act commences on a day fixed by the Minister by written
5 notice.

6 *Note 1* The naming and commencement provisions automatically commence on
7 the notification day (see Legislation Act, s 75 (1)).

8 *Note 2* A single day or time may be fixed, or different days or times may be
9 fixed, for the commencement of different provisions (see Legislation
10 Act, s 77 (1)).

11 *Note 3* If a provision has not commenced within 6 months beginning on the
12 notification day, it automatically commences on the first day after that
13 period (see Legislation Act, s 79).

14 **3 Legislation amended**

15 This Act amends the *Electronic Transactions Act 2001*.

16 **4 Simplified outline**
17 **New section 4 (2)**

18 *insert*

19 (2) Part 2A contains provisions applying to contracts involving
20 electronic communications, including provisions (relating to the
21 internet in particular) for the following:

22 (a) an unaddressed proposal to form a contract is taken to be an
23 invitation to make offers, rather than as an offer that if
24 accepted would result in a contract;

25 (b) a contract formed automatically is not invalid, void or
26 unenforceable because there was no human review or
27 intervention;

- 1 (c) a portion of an electronic communication containing an input
2 error can be withdrawn in certain circumstances;
- 3 (d) the application of certain provisions of part 2 to the extent they
4 do not apply of their own force.

5 **5 New section 6A**

6 *in part 1, insert*

7 **6A Exemptions**

- 8 (1) The regulations may provide that all or stated provisions of this Act
9 do not apply—
- 10 (a) to transactions, requirements, permissions, electronic
11 communications or other stated matters; or
- 12 (b) in stated circumstances.

13 *Note* Power to make a statutory instrument in relation to a matter includes
14 power to make provision in relation to a class of matter (see Legislation
15 Act, s 48 (2)).

- 16 (2) A regulation may provide that all or stated provisions of this Act do
17 not apply to stated territory laws.

18 **6 Validity of electronic transactions**
19 **Section 7 (3) and (4)**

20 *omit*

21 **7 Writing**
22 **Section 8, note**

23 *omit*

1 **8 Section 9**

2 *substitute*

3 **9 Signatures**

4 (1) If, under a territory law, a person's signature is required, that
5 requirement is taken to have been met for an electronic
6 communication if—

7 (a) a method is used to identify the person and to show the
8 person's intention in relation to the information communicated;
9 and

10 (b) the method was either—

11 (i) as reliable as was appropriate for the purpose for which
12 the electronic communication was generated or
13 communicated, in the circumstances, including any
14 relevant agreement; or

15 (ii) proven in fact to have fulfilled the functions mentioned in
16 paragraph (a), by itself or together with further evidence;
17 and

18 (c) the person to whom the signature is required to be given
19 consents to that requirement being met using the method
20 mentioned in paragraph (a).

21 (2) This section does not affect the operation of any other territory law
22 that provides for or in relation to requiring—

23 (a) an electronic communication to contain an electronic signature
24 (however described); or

25 (b) an electronic communication to contain a unique identification
26 in an electronic form; or

1 (c) a particular method to be used for an electronic communication
2 to identify the originator of the communication and to show the
3 originator's intention in relation to the information
4 communicated.

5 (3) The reference in subsection (1) to a law that requires a signature
6 includes a reference to a law that provides consequences for the
7 absence of a signature.

8 **9 Production of document**
9 **Section 10, note**

10 *omit*

11 **10 Retention of information and documents**
12 **Section 11, note**

13 *omit*

14 **11 Exemptions from this division**
15 **Section 12**

16 *omit*

17 **12 Section 13**

18 *substitute*

19 **13 Time of dispatch**

20 (1) For a territory law, unless otherwise agreed between the originator
21 and the addressee of an electronic communication, the time of
22 dispatch of the electronic communication is—

23 (a) the time when the electronic communication leaves an
24 information system under the control of the originator or of the
25 party who sent it on behalf of the originator; or

1 (b) if the electronic communication has not left an information
2 system under the control of the originator or of the party who
3 sent it on behalf of the originator—the time when the
4 electronic communication is received by the addressee.

5 **Example—par (b)**
6 the exchange by parties of electronic communications through the same
7 information system

8 *Note* An example is part of the Act, is not exhaustive and may extend,
9 but does not limit, the meaning of the provision in which it
10 appears (see Legislation Act, s 126 and s 132).

11 (2) This section applies even though the place where the information
12 system supporting an electronic address is located may be different
13 from the place where the electronic communication is taken to have
14 been dispatched under section 13B.

15 **13A Time of receipt**

16 (1) For a territory law, unless otherwise agreed between the originator
17 and the addressee of an electronic communication—

18 (a) the time of receipt of the electronic communication is the time
19 when the electronic communication becomes capable of being
20 retrieved by the addressee at an electronic address designated
21 by the addressee; or

22 (b) the time of receipt of the electronic communication at another
23 electronic address of the addressee is the time when both—

24 (i) the electronic communication has become capable of
25 being retrieved by the addressee at that address; and

26 (ii) the addressee has become aware that the electronic
27 communication has been sent to that address.

- 1 (2) For subsection (1), unless otherwise agreed between the originator
2 and the addressee of the electronic communication, it is assumed
3 that the electronic communication is capable of being retrieved by
4 the addressee when it reaches the addressee's electronic address.
- 5 (3) This section applies even though the place where the information
6 system supporting an electronic address is located may be different
7 from the place where the electronic communication is taken to have
8 been received under section 13B.

9 **13B Place of dispatch and place of receipt**

- 10 (1) For a territory law, unless otherwise agreed between the originator
11 and the addressee of an electronic communication—
- 12 (a) the electronic communication is taken to have been dispatched
13 at the place where the originator has its place of business; and
- 14 (b) the electronic communication is taken to have been received at
15 the place where the addressee has its place of business.
- 16 (2) For subsection (1)—
- 17 (a) a party's place of business is taken to be the location indicated
18 by the party, unless another party shows that the party making
19 the indication does not have a place of business at the location;
20 and
- 21 (b) if a party has not indicated a place of business and has only
22 1 place of business—that place is taken to be the party's place
23 of business; and

- 1 (c) if a party has not indicated a place of business and has more
2 than 1 place of business—the place of business is that which
3 has the closest relationship to the underlying transaction,
4 taking into account the circumstances known to or
5 contemplated by the parties at any time before or at the end of
6 the transaction; and
- 7 (d) if a party has not indicated a place of business and has more
8 than 1 place of business, but paragraph (c) does not apply—the
9 party’s principal place of business is taken to be the party’s
10 only place of business; and
- 11 (e) if a party is an individual and does not have a place of
12 business—the party’s place of business is taken to be the
13 party’s home address.
- 14 *Note 1 Individual* means a natural person (see Legislation Act, dict,
15 pt 1).
- 16 *Note 2 Home address*, for an individual, means the address of the place
17 where the individual usually lives (see Legislation Act, dict, pt 1).
- 18 (3) A location is not a place of business only because it is—
- 19 (a) where equipment and technology supporting an information
20 system used by a party are located; or
- 21 (b) where the information system may be accessed by other
22 parties.
- 23 (4) The fact only that a party makes use of a domain name or electronic
24 mail address connected to a particular country does not create a
25 presumption that its place of business is located in the country.

26 **13 Attribution of electronic communications**
27 **Section 14 (3) and (4)**

28 *omit*

14 **New part 2A***insert***Part 2A** **Additional provisions applying to contracts involving electronic communications****14A** **Application—pt 2A**

- (1) This part applies to the use of electronic communications in relation to the formation or performance of a contract between parties where the proper law of the contract is (or would on its formation be) the law of the Territory.
- (2) Also, this part applies—
- (a) whether some or all of the parties are located within Australia or elsewhere; and
 - (b) whether the contract is for business purposes, for personal, family or household purposes, or for other purposes.

14B **Invitation to treat—contracts**

- (1) This section applies to a proposal to form a contract made through 1 or more electronic communications if the proposal—
- (a) is not addressed to 1 or more particular parties; and
 - (b) is generally accessible to parties making use of information systems.
- (2) The proposal is taken to be an invitation to make offers, unless it clearly shows the intention of the party making the proposal to be bound in case of acceptance.

- 1 (3) For subsection (1), a reference to a proposal made through an
2 electronic communication includes a proposal that makes use of an
3 interactive application for the placement of an order through an
4 information system.

5 **14C Use of automated message systems for contract**
6 **formation—non-intervention of individual**

- 7 (1) This section applies to a contract formed by—
8 (a) the interaction of an automated message system and an
9 individual; or
10 (b) the interaction of automated message systems.

11 *Note* **Individual** means a natural person (see Legislation Act, dict, pt 1).

- 12 (2) The contract is not invalid, void or unenforceable on the ground
13 only that no individual reviewed or intervened in each action carried
14 out by the automated message systems or the resulting contract.

15 **14D Error in electronic communications—contracts**

- 16 (1) This section applies in relation to a statement, declaration, demand,
17 notice or request, including an offer and the acceptance of an offer,
18 that the parties are required to make or choose to make in relation to
19 the formation or performance of a contract.

- 20 (2) Subsection (3) applies if—
21 (a) an individual makes an input error in an electronic
22 communication exchanged with the automated message system
23 of another party; and

24 *Note* **Individual** means a natural person (see Legislation Act, dict,
25 pt 1).

- 26 (b) the automated message system does not provide the individual
27 with an opportunity to correct the error.

- 1 (3) The individual, or the party on whose behalf the individual was
2 acting, has the right to withdraw the part of the electronic
3 communication in which the input was made if—
- 4 (a) the individual, or the party on whose behalf the individual was
5 acting, notifies the other party of the error as soon as possible
6 after becoming aware of the error and indicates that he or she
7 made an error in the electronic communication; and
- 8 (b) the individual, or the party on whose behalf the individual was
9 acting, has not used or received any material benefit or value
10 from the goods or services (if any) received from the other
11 party.
- 12 (4) The right of withdrawal of a part of an electronic communication
13 under this section is not of itself a right to rescind or otherwise
14 terminate a contract.
- 15 (5) The consequences (if any) of the exercise of the right of withdrawal
16 of a portion of an electronic communication under this section must
17 be decided in accordance with any applicable rule of law.
- 18 *Note* In some circumstances the withdrawal of a part of an electronic
19 communication may invalidate the entire communication or make it
20 ineffective for the purposes of contract formation (see the UNCITRAL
21 explanatory note for the United Nations Convention on the Use of
22 Electronic Communications in International Contracts, par 241,
23 accessible at www.uncitral.org.)

24 **14E Application of Act in relation to contracts**

- 25 (1) Section 7 and sections 13 to 13B apply to the following in the same
26 way as they apply to a transaction or electronic communication
27 mentioned in those sections, and apply as if “For a territory law”
28 was omitted:
- 29 (a) a transaction constituted by or relating to a contract;
- 30 (b) an electronic communication relating to the formation or
31 performance of a contract.

- 1 (2) However, this part (including subsection (1)) does not apply to or in
2 relation to a contract to the extent that—
- 3 (a) part 2 would of its own force have the same effect as this part
4 if this part applied; or
- 5 (b) another State or Territory law (that is in substantially the same
6 terms as part 2) would of its own force have the same effect as
7 this part if this part applied.
- 8 **Example—circumstance where pt 2 may not apply of its own force**
9 a contract negotiated in a State or Territory with a supplier located overseas
- 10 *Note* An example is part of the Act, is not exhaustive and may extend, but
11 does not limit, the meaning of the provision in which it appears (see
12 Legislation Act, s 126 and s 132).

13 **15 New part 10**

14 *insert*

15 **Part 10 Transitional—Electronic**
16 **Transactions Amendment**
17 **Act 2012**

18 **50 Transitional—Electronic Transactions Amendment**
19 **Act 2012**

- 20 (1) Subject to subsection (2)—
- 21 (a) section 14B applies to proposals made before the
22 commencement date; and
- 23 (b) section 14C applies to actions carried out before the
24 commencement date; and
- 25 (c) section 14D applies to statements, declarations, demands,
26 notices or requests, including offers and the acceptance of
27 offers, made or given before the commencement date.

1 (2) Subsection (1) and part 2A do not apply in relation to contracts
2 formed before the commencement date.

3 (3) In this section:

4 *commencement date* means the day part 2A commences.

5 **51 Expiry—pt 10**

6 This part expires on the day it commences.

7 **16 Dictionary, note 2**

8 *insert*

- 9 • home address
10 • individual
11 • territory law

12 **17 Dictionary, new definitions**

13 *insert*

14 *addressee* of an electronic communication means a person who is
15 intended by the originator to receive the electronic communication,
16 but does not include a person acting as an intermediary in relation to
17 the electronic communication.

18 *automated message system* means a computer program or an
19 electronic or other automated means used to initiate an action or
20 respond to data messages in whole or in part, without review or
21 intervention by an individual each time an action is started or a
22 response is generated by the system.

23 **18 Dictionary, definition of law of this jurisdiction**

24 *omit*

1 **19 Dictionary, new definitions**

2 *insert*

3 *originator* of an electronic communication means a person by
4 whom, or on whose behalf, the electronic communication has been
5 sent or generated before storage, if any, but does not include a
6 person acting as an intermediary in relation to the electronic
7 communication.

8 *performance* of a contract includes non-performance of the contract.

9 **20 Dictionary, definition of *place of business***

10 *substitute*

11 *place of business* means—

12 (a) in relation to a person, other than an entity referred to in
13 paragraph (b)—a place where the person maintains a
14 non-transitory establishment to pursue an economic activity
15 other than the temporary provision of goods or services out of
16 a particular location; or

17 (b) in relation to a government, an authority of a government or a
18 non-profit body—a place where an operation or activity is
19 carried out by the government, authority or body.

20 **21 Dictionary, definition of *transaction***

21 *substitute*

22 *transaction* includes—

23 (a) any transaction in the nature of a contract, agreement or other
24 arrangement; and

- 1 (b) any statement, declaration, demand, notice or request,
2 including an offer and the acceptance of an offer, that the
3 parties are required to make or choose to make in relation to
4 the formation or performance of a contract, agreement or other
5 arrangement; and
- 6 (c) any transaction of a non-commercial nature.

7 **22 Further amendments, mentions of law of this jurisdiction**

- 8 *omit*
- 9 law of this jurisdiction
- 10 *substitute*
- 11 territory law
- 12 *in*
- 13 • section 4
 - 14 • sections 7 to 11
 - 15 • section 14

16 **23 Further amendments, mentions of laws of this**
17 ***jurisdiction***

- 18 *omit*
- 19 laws of this jurisdiction
- 20 *substitute*
- 21 territory laws
- 22 *in*
- 23 • division 2.1 heading
 - 24 • division 2.2 heading
 - 25 • division 2.3 heading

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 23 February 2012.

2 Notification

Notified under the Legislation Act on 2012.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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