

Electronic Transactions Act 2000 No 8

[2000-8]



New South Wales

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[Civil Procedure Act 2005 No 28](#), Sch 5.17 [3] (not commenced — to commence on 1.10.2005)

Authorisation

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Contents

| | |
|---|----|
| Long title | 4 |
| Part 1 Preliminary | 4 |
| 1 Name of Act | 4 |
| 2 Commencement | 4 |
| 3 Object | 4 |
| 4 Simplified outline | 4 |
| 5 Interpretation | 5 |
| 6 Crown to be bound | 6 |
| Part 2 Application of legal requirements to electronic communications ... | 6 |
| Division 1 General rule about validity of transactions for the purposes of laws of this jurisdiction | 6 |
| 7 Validity of electronic transactions | 6 |
| Division 2 Requirements under laws of this jurisdiction | 6 |
| 8 Writing | 6 |
| 9 Signatures | 8 |
| 10 Production of document | 8 |
| 11 Retention of information and documents | 10 |
| 12 Exemptions from this Division | 11 |
| Division 3 Other provisions relating to laws of this jurisdiction | 12 |

| | |
|--|----|
| 13 Time and place of dispatch and receipt of electronic communications | 12 |
| 14 Attribution of electronic communications | 13 |
| Part 2A Courts administration | 13 |
| 14A Definitions | 13 |
| 14B Establishment of ECM system | 14 |
| 14C Authorisation of use of ECM system in relation to courts | 14 |
| 14D Requirements for writing..... | 15 |
| 14E Requirements for signatures or seals | 15 |
| 14F Requirements for original or certified documents..... | 15 |
| 14G Requirements as to multiple copies | 15 |
| 14H Status of documents created by ECM system | 15 |
| 14I Use of ECM system for the conduct of certain hearings | 16 |
| 14J Misdirected initiating process | 16 |
| 14K Uniform time | 16 |
| 14L Exclusion of liability for disclosures by means of ECM system..... | 16 |
| 14M Electronic service of documents | 17 |
| 14N Powers to make rules of court and regulations | 17 |
| 14O Savings and transitional regulations | 18 |
| 14P Proceedings originating in non-ECM courts..... | 18 |
| 14Q Proceedings on application for assessment of bill of costs | 18 |
| 14R Part 2 excluded..... | 18 |
| Part 3 Miscellaneous | 18 |
| 15 Regulations..... | 18 |

Electronic Transactions Act 2000 No 8



New South Wales

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

Part 1 Preliminary

1 Name of Act

This Act is the *Electronic Transactions Act 2000*.

2 Commencement

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

3 Object

The object of this Act 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.

4 Simplified outline

The following is a simplified outline of this Act:

- (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.
- (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,
 - (iv) a requirement to record information,
 - (v) a requirement to retain a document.
- (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.
- (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.

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.

this jurisdiction means New South Wales.

transaction includes any transaction in the nature of a contract, agreement or other arrangement, and also includes any transaction of a non-commercial nature.

(2) Notes in the text of this Act do not form part of this Act.

6 Crown to be bound

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.

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

7 Validity of electronic transactions

- (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.
- (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 specified transaction or specified class of transactions.
- (4) The regulations may provide that subsection (1) does not apply to a specified law of this jurisdiction.

Division 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 the person gives the information by means of an electronic communication, where:
 - (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

- (b) 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 electronic communication, where:
- (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
 - (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 makes provision for or in relation to requiring or permitting information to be given, 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.
- (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.
- (5) For the purposes of this section, **giving information** includes, but is not limited to, the following:
- (a) making an application,
 - (b) making or lodging a claim,
 - (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,
 - (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 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

(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.

(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:

(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

(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 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:

(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 makes provision 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.

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 the person records the information in electronic form, where:
 - (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
 - (b) if the regulations require that the information be recorded on a particular kind of data storage device—that requirement has been 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 the person retains, or causes another person to retain, an electronic form of the document throughout that period, where:
 - (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
 - (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
 - (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.
- (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:
 - (a) the addition of any endorsement, or
 - (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 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.

Note—

Section 12 sets out exemptions from this section.

12 Exemptions from this Division

- (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.
- (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.

- (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.

Division 3 Other provisions relating to laws of this jurisdiction

13 Time and place of dispatch and receipt of electronic communications

- (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.
- (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.
- (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.
- (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.
- (5) For the purposes of a law of this jurisdiction, unless otherwise agreed between the originator and the addressee of an electronic communication:
 - (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 purposes of the application of subsection (5) to an electronic communication:
 - (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

- (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
- (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 specified electronic communication or specified class of electronic communications.
- (8) The regulations may provide that this section does not apply to a specified law of this jurisdiction.

14 Attribution of electronic communications

- (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) Subsection (1) does not affect the operation of a law of this jurisdiction that makes provision 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.
- (3) The regulations may provide that this section does not apply to a specified electronic communication or specified class of electronic communications.
- (4) The regulations may provide that this section does not apply to a specified law of this jurisdiction.

Part 2A Courts administration

14A Definitions

- (1) In this Part:

court includes any person or body that exercises judicial, magisterial or coronial functions, and includes any other person or body that is declared by the regulations to

be a court for the purposes of this Part.

ECM court means a court in respect of which the use of an ECM system is authorised pursuant to an order in force under section 14C.

ECM system means an electronic case management system established under section 14B.

- (2) In this Part, a reference to **filing** a document with an ECM court includes a reference to any other method of lodging a document with, or otherwise sending a document to, the court.

14B Establishment of ECM system

- (1) The Attorney General may establish an electronic case management system to do any one or more of the following:
- (a) to enable documents with respect to legal proceedings to be created in electronic form,
 - (b) to enable documents with respect to legal proceedings to be filed in electronic form,
 - (c) to enable documents with respect to legal proceedings to be issued in electronic form,
 - (d) to enable documents with respect to legal proceedings to be used in electronic form,
 - (e) to enable documents with respect to legal proceedings to be served in electronic form,
 - (f) to enable parties to legal proceedings to communicate in electronic form with other parties to the proceedings and with the court before which the proceedings are being taken,
 - (g) to enable information concerning the progress of legal proceedings to be provided in electronic form to parties to the proceedings and to members of the public generally.
- (2) For the purposes of the *Freedom of Information Act 1989*, the *Privacy and Personal Information Protection Act 1998* and the *State Records Act 1998*, information contained in the ECM system with respect to proceedings in an ECM court (including proceedings that have been finally disposed of) is taken to be information concerning the judicial functions of that court.

14C Authorisation of use of ECM system in relation to courts

The Attorney General may, by order published in the Gazette, authorise the use of an ECM

system by such courts, and for such purposes, as are specified in the order.

14D Requirements for writing

Any provision of any law of this jurisdiction that requires a document filed with, or issued by, an ECM court to be in writing is satisfied if the document is filed or issued by means of the ECM system in accordance with rules of court.

14E Requirements for signatures or seals

- (1) Any provision of any law of this jurisdiction that requires a document that is filed with, or issued by, an ECM court to be signed or sealed is satisfied, in the case of a document that is filed or issued by means of the ECM system, if the document:
 - (a) is authenticated by means of a facsimile of the relevant signature or seal, or
 - (b) is authenticated in some other manner in accordance with rules of court.
- (2) If authenticated as referred to in subsection (1) (a) or (b), a document that is filed with, or issued by, an ECM court by means of the ECM system has the same effect as a document that has been duly signed or sealed.

14F Requirements for original or certified documents

Any provision of any law of this jurisdiction that requires an original or certified document to be filed with an ECM court is satisfied by the filing of a copy of the document by means of the ECM system in accordance with rules of court.

14G Requirements as to multiple copies

Any provision of any law of this jurisdiction that requires multiple copies of a document to be filed or served does not apply to:

- (a) a document that is filed with an ECM court by means of the ECM system, or
- (b) a document that, having been filed with an ECM court, is served in electronic form, whether by means of the ECM system or otherwise.

14H Status of documents created by ECM system

A document created by means of the ECM system:

- (a) in the case of a document created by an ECM court, being a document that is authorised or required to be issued by the court, is taken to have been issued by the court, or
- (b) in the case of a document created by a party to proceedings in an ECM court, being a document that is authorised or required to be filed by the party, is taken to have been filed by the party.

14I Use of ECM system for the conduct of certain hearings

- (1) This section applies to any hearing of proceedings that an ECM court is authorised or required to conduct in private, other than a hearing conducted for the purpose of receiving evidence.
- (2) A hearing to which this section applies may be conducted by electronic communication sent and received by means of the ECM system, but only if the rules of court so provide.

14J Misdirected initiating process

- (1) This section applies to proceedings:
 - (a) that are commenced in a court by a document filed by means of the ECM system, or
 - (b) that are remitted to a court under this section.
- (2) On determining that it does not have jurisdiction to hear the whole or any part of the proceedings, the court:
 - (a) may remit the proceedings to such other court as appears to it to have jurisdiction to do so, and
 - (b) may make such other orders as it considers appropriate in the circumstances.
- (3) Proceedings that are remitted to a court under this section are taken to have been commenced in that court on the date on which they were originally commenced.

14K Uniform time

For the purpose of ascertaining when it has occurred, any transaction effected by means of the ECM system is taken to have occurred in Sydney.

Note—

Persons accessing the ECM system from within Broken Hill or Lord Howe Island will therefore be taken to have done so according to New South Wales standard time or New South Wales summer time, as the case requires, and not according to standard time or summer time in Broken Hill or Lord Howe Island.

14L Exclusion of liability for disclosures by means of ECM system

- (1) No action for defamation or breach of confidence lies against the State or any other person by reason only of the publication, by means of the ECM system, of information contained in that system.
- (2) For the purposes of the law relating to defamation and breach of confidence, the granting of access to information contained in the ECM system does not constitute an authorisation or approval of the publication of the information by the person to whom access is granted.

14M Electronic service of documents

Any document that (having been filed in, or issued by, an ECM court by means of the ECM system) is served electronically, whether by means of the ECM system or otherwise:

- (a) if served after 5.00pm on any day, is taken (subject to paragraph (b)) to have been served on the next day, and
- (b) if served on a Saturday, Sunday or public holiday, is taken to have been served on the next day that is not a Saturday, Sunday or public holiday.

14N Powers to make rules of court and regulations

- (1) In the case of an ECM court whose practice and procedure are governed by rules of court, the powers of the person or body by whom such rules are made include a power to make rules, not inconsistent with this Part, with respect to ECM matters.
- (2) In the case of an ECM court whose practice and procedure are governed by regulations, the powers of the person or body by whom such regulations are made include a power to make regulations, not inconsistent with this Part, with respect to the ECM matters.
- (3) The following matters are **ECM matters** for the purposes of this section:
 - (a) the kinds of proceedings in respect of which the ECM system may or must be used in relation to a court,
 - (b) the kinds of documents that may or must be filed in a court by means of the ECM system,
 - (c) the kinds of documents that may or must be issued by a court by means of the ECM system,
 - (d) the practice and procedure to be followed in connection with:
 - (i) documents that are filed in a court, or issued by a court, by means of the ECM system, and
 - (ii) the conduct of hearings by electronic communication sent by means of the ECM system,
 - (e) the persons to whom, the circumstances in which and the conditions on which access may be given to information contained on the ECM system in relation to the court and proceedings before a court,
 - (f) any other matter with respect to the operation, use or control of the ECM system in relation to a court and proceedings before a court.

14O Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the granting or withdrawal of the Attorney General's authorisation of the use of the ECM system in relation to a court by operation of an order under section 14C.
- (2) If the regulations so provide, such a provision has effect despite anything to the contrary in this or any other Act or law with respect to the following matters:
 - (a) the practice or procedure of a court,
 - (b) the filing, issue or service of documents in connection with proceedings in a court,
 - (c) the evidentiary status of documents in proceedings before a court.

14P Proceedings originating in non-ECM courts

This Part applies to proceedings that have been remitted to an ECM court by a court that is not an ECM court (including a court of the Commonwealth or a court of some other State or Territory) in the same way as it applies to proceedings that have originated in an ECM court.

14Q Proceedings on application for assessment of bill of costs

For the purposes of this Part, proceedings on an application for the assessment of costs under Division 6 of Part 11 of the *Legal Profession Act 1987* are taken to be proceedings in the Supreme Court.

Note—

The ECM system will therefore apply to such proceedings when it applies to proceedings before the Supreme Court, and in its application to such proceedings will be subject to any rules of the Supreme Court that are made under the power conferred by section 14N.

14R Part 2 excluded

Part 2 does not apply to matters relating to the practice or procedure of a court including, in particular, matters relating to the filing, issue or service of documents.

Part 3 Miscellaneous

15 Regulations

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