

# Electronic Transactions Act 2000 No 8

[2000-8]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Authorisation

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## Contents

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12 (Repealed) .....	12

<b>Division 3 Other provisions relating to laws of this jurisdiction</b> .....	13
13 Time of dispatch .....	13
13A Time of receipt .....	13
13B Place of dispatch and place of receipt.....	14
14 Attribution of electronic communications .....	15
<b>Part 2A Additional provisions applying to contracts involving electronic communications</b> .....	15
14A Application and operation of this Part .....	15
14B Invitation to treat regarding contracts.....	15
14C Use of automated message systems for contract formation—non-intervention of natural person .....	15
14D Error in electronic communications regarding contracts.....	16
14E Application of Act in relation to contracts.....	17
<b>Part 2B Remote witnessing</b> .....	17
14F Definitions .....	17
14G Witnessing and attestation of documents by audio visual link.....	18
14H Original document.....	19
14I Signatory and witness may be outside jurisdiction.....	19
14J Place of execution .....	20
14K Regulations.....	20
14L Savings .....	20
<b>Part 3 Miscellaneous</b> .....	20
15 Regulations.....	20
16 Transitional provisions—Electronic Transactions Amendment Act 2010 .....	20
<b>Part 4 (Repealed)</b> .....	21
<b>Schedule 1 Courts—electronic case management systems</b> .....	21

# 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

(1) 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.
- (2) This Act also contains provisions applying to contracts involving electronic communications, including provisions (relating to the internet in particular) for the following—
- (a) an unaddressed proposal to form a contract is to be regarded as an invitation to make offers, rather than as an offer that if accepted would result in a contract,
  - (b) a contract formed automatically is not invalid, void or unenforceable because there was no human review or intervention,
  - (c) a portion of an electronic communication containing an input error can be withdrawn in certain circumstances,
  - (d) the application of certain provisions of Part 2 to the extent they do not apply of their own force.

## 5 Interpretation

- (1) In this Act—

**addressee** of an electronic communication means a person who is intended by the originator to receive the electronic communication, but does not include a person acting as an intermediary with respect to the electronic communication.

**automated message system** means a computer program or an electronic or other automated means used to initiate an action or respond to data messages in whole or in part, without review or intervention by a natural person each time an action is initiated or a response is generated by the system.

**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.

**originator** of an electronic communication means a person by whom, or on whose behalf, the electronic communication has been sent or generated before storage, if any, but does not include a person acting as an intermediary with respect to the electronic communication.

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

**place of business** means—

- (a) in relation to a person, other than an entity referred to in paragraph (b)—a place where the person maintains a non-transitory establishment to pursue an economic activity other than the temporary provision of goods or services out of a specific location, or
- (b) in relation to a government, an authority of a government or a non-profit body—a place where any operations or activities are carried out by that government, authority or body.

**this jurisdiction** means New South Wales.

**transaction** includes—

- (a) any transaction in the nature of a contract, agreement or other arrangement, and
- (b) any statement, declaration, demand, notice or request, including an offer and the acceptance of an offer, that the parties are required to make or choose to make in connection with the formation or performance of a contract, agreement or other arrangement, and
- (c) 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.

### **6A Exemptions**

- (1) The regulations may provide that all or specified provisions of this Act do not apply—
  - (a) to transactions, requirements, permissions, electronic communications or other matters specified, or of classes specified, in the regulations for the purposes of this section, or
  - (b) in circumstances specified, or of classes specified, in the regulations for the purposes of this section.
- (2) The regulations may provide that all or specified provisions of this Act do not apply to specified laws of this jurisdiction.

## **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), (4) (Repealed)

## 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.

## **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 intention in respect of the information communicated, and
  - (b) the method used was either—
    - (i) as reliable as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement, or
    - (ii) proven in fact to have fulfilled the functions described in paragraph (a), by itself or together with further evidence, 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 intention in respect of the information communicated.
- (3) The reference in subsection (1) to a law that requires a signature includes a reference to a law that provides consequences for the absence of a signature.

## **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.

## **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.

## **12 (Repealed)**

## **Division 3 Other provisions relating to laws of this jurisdiction**

### **13 Time of dispatch**

- (1) For the purposes of a law of this jurisdiction, unless otherwise agreed between the originator and the addressee of an electronic communication, the time of dispatch of the electronic communication is—
  - (a) the time when the electronic communication leaves an information system under the control of the originator or of the party who sent it on behalf of the originator, or
  - (b) if the electronic communication has not left an information system under the control of the originator or of the party who sent it on behalf of the originator—the time when the electronic communication is received by the addressee.

**Note—**

Paragraph (b) would apply to a case where the parties exchange electronic communications through the same information system.

- (2) Subsection (1) applies even though the place where the information system supporting an electronic address is located may be different from the place where the electronic communication is taken to have been dispatched under section 13B.

### **13A Time of receipt**

- (1) For the purposes of a law of this jurisdiction, unless otherwise agreed between the originator and the addressee of an electronic communication—
  - (a) the time of receipt of the electronic communication is the time when the electronic communication becomes capable of being retrieved by the addressee at an electronic address designated by the addressee, or
  - (b) the time of receipt of the electronic communication at another electronic address of the addressee is the time when both—
    - (i) the electronic communication has become capable of being retrieved by the addressee at that address, and
    - (ii) the addressee has become aware that the electronic communication has been sent to that address.
- (2) For the purposes of subsection (1), unless otherwise agreed between the originator and the addressee of the electronic communication, it is to be assumed that the electronic communication is capable of being retrieved by the addressee when it reaches the addressee's electronic address.
- (3) Subsection (1) applies even though the place where the information system

supporting an electronic address is located may be different from the place where the electronic communication is taken to have been received under section 13B.

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

- (1) 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 at the place where the originator has its place of business, and
  - (b) the electronic communication is taken to have been received at the place where the addressee has its place of business.
- (2) For the purposes of the application of subsection (1) to an electronic communication—
  - (a) a party's place of business is assumed to be the location indicated by that party, unless another party demonstrates that the party making the indication does not have a place of business at that location, and
  - (b) if a party has not indicated a place of business and has only one place of business, it is to be assumed that that place is the party's place of business, and
  - (c) if a party has not indicated a place of business and has more than one place of business, the place of business is that which has the closest relationship to the underlying transaction, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the transaction, and
  - (d) if a party has not indicated a place of business and has more than one place of business, but paragraph (c) does not apply—it is to be assumed that the party's principal place of business is the party's only place of business, and
  - (e) if a party is a natural person and does not have a place of business—it is to be assumed that the party's place of business is the place of the party's habitual residence.
- (3) A location is not a place of business merely because that is—
  - (a) where equipment and technology supporting an information system used by a party are located, or
  - (b) where the information system may be accessed by other parties.
- (4) The sole fact that a party makes use of a domain name or electronic mail address connected to a specific country does not create a presumption that its place of business is located in that country.

#### **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), (4) (Repealed)

### **Part 2A Additional provisions applying to contracts involving electronic communications**

#### **14A Application and operation of this Part**

This Part applies to the use of electronic communications in connection with 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 this jurisdiction, and so 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 regarding contracts**

- (1) A proposal to form a contract made through one or more electronic communications that—
  - (a) is not addressed to one or more specific parties, and
  - (b) is generally accessible to parties making use of information systems,is to be considered as an invitation to make offers, unless it clearly indicates the intention of the party making the proposal to be bound in case of acceptance.
- (2) Subsection (1) extends to proposals that make use of interactive applications for the placement of orders through information systems.

#### **14C Use of automated message systems for contract formation—non-intervention of**

**natural person**

A contract formed by—

- (a) the interaction of an automated message system and a natural person, or
- (b) the interaction of automated message systems,

is not invalid, void or unenforceable on the sole ground that no natural person reviewed or intervened in each of the individual actions carried out by the automated message systems or the resulting contract.

**14D Error in electronic communications regarding contracts**

- (1) This section applies in relation to a statement, declaration, demand, notice or request, including an offer and the acceptance of an offer, that the parties are required to make or choose to make in connection with the formation or performance of a contract.
- (2) If—
  - (a) a natural person makes an input error in an electronic communication exchanged with the automated message system of another party, and
  - (b) the automated message system does not provide the person with an opportunity to correct the error,the person, or the party on whose behalf the person was acting, has the right to withdraw the portion of the electronic communication in which the input error was made if—
  - (c) the person, or the party on whose behalf the person was acting, notifies the other party of the error as soon as possible after having learned of the error and indicates that he or she made an error in the electronic communication, and
  - (d) the person, or the party on whose behalf the person was acting, has not used or received any material benefit or value from the goods or services, if any, received from the other party.
- (3) The right of withdrawal of a portion of an electronic communication under this section is not of itself a right to rescind or otherwise terminate a contract.
- (4) The consequences (if any) of the exercise of the right of withdrawal of a portion of an electronic communication under this section are to be determined in accordance with any applicable rule of law.

**Note—**

In some circumstances the withdrawal of a portion of an electronic communication may invalidate the entire communication or render it ineffective for the purposes of contract formation (see paragraph 241 of the



UNCITRAL explanatory note for the United Nations Convention on the Use of Electronic Communications in International Contracts).

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

- (1) Subject to subsection (2), the provisions of sections 7 and 13–13B apply to—
- (a) a transaction constituted by or relating to a contract, or
  - (b) an electronic communication relating to the formation or performance of a contract,
- in the same way as they apply to a transaction or electronic communication referred to in those sections, and so apply as if the words “For the purposes of a law of this jurisdiction” were omitted.
- (2) However, this Part (including subsection (1)) does not apply to or in relation to a contract to the extent that—
- (a) Part 2 would of its own force have the same effect as this Part if this Part applied, or
  - (b) a law of another State or Territory (that is in substantially the same terms as Part 2) would of its own force have the same effect as this Part if this Part applied.

#### **Note—**

This section applies provisions of Part 2 to contracts or proposed contracts to the extent (if any) that those provisions do not apply merely because they are expressed to apply in relation to a law of this jurisdiction. This section also disapplies the provisions of Part 2A to the extent that Part 2 would apply of its own force. An example where Part 2 may not apply of its own force is where a contract is being negotiated in a State or Territory from a supplier located overseas.

## **Part 2B Remote witnessing**

### **14F Definitions**

In this Part—

**audio visual link** means technology that enables continuous and contemporaneous audio and visual communication between persons at different places, including video conferencing.

**document** includes the following documents, but does not include a document excluded from this definition by the regulations—

- (a) a will,
- (b) a power of attorney or an enduring power of attorney,
- (c) a deed or agreement,

- (d) an enduring guardianship appointment,
- (e) an affidavit, including an annexure or exhibit to the affidavit,
- (f) a statutory declaration.

**signatory**—see section 14G(2)(a).

**witness**—see section 14G(2).

#### **14G Witnessing and attestation of documents by audio visual link**

- (1) Despite any other Act or law—
  - (a) if the signature of a document is required under an Act or another law to be witnessed, the signature may be witnessed by audio visual link, and
  - (b) arrangements in relation to witnessing signatures and the attestation of documents may be performed by audio visual link.
- (2) A person witnessing the signing of a document by audio visual link (the **witness**) must—
  - (a) observe the person signing the document (the **signatory**) sign the document in real time, and
  - (b) attest or otherwise confirm the signature was witnessed by signing the document or a copy of the document, and
  - (c) be reasonably satisfied the document the witness signs is the same document, or a copy of the document signed by the signatory, and
  - (d) endorse the document, or the copy of the document, with a statement—
    - (i) specifying the method used to witness the signature of the signatory, and
    - (ii) that the document was witnessed in accordance with this section.

**Note—**

A document may be endorsed under paragraph (d) with a statement, for example, that the document was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the [Electronic Transactions Act 2000](#).

- (3) Without limiting the ways a witness may confirm the signature was witnessed, the witness may—
  - (a) sign a counterpart of the document as soon as practicable after witnessing the signing of the document, or
  - (b) if the signatory scans and sends a copy of the signed document

electronically—countersign the document as soon as practicable after witnessing the signing of the document.

(4) Without limiting subclause (1)(b)—

(a) arrangements in relation to witnessing signatures by audio visual link include the following—

- (i) certification of matters required by an Act or another law,
- (ii) confirming or verifying the identity of the signatory to a document,
- (iii) attestation of a signature,
- (iv) swearing or affirming the contents of an affidavit,
- (v) seeing the face of the signatory, and

(b) a requirement in an Act or another law for the presence of a witness, signatory or other person is taken to be satisfied if the witness, signatory or other person is present by audio visual link.

#### **14H Original document**

(1) For the purposes of another Act or law, the original document for a document witnessed under this Part is a document that—

- (a) contains every page or part of the document, and
- (b) contains each signature or mark of the signatory and witnesses wherever required in the document, and
- (c) contains the endorsement required by section 14G(2)(d), and
- (d) if a signature, mark or endorsement was applied to the same page or part by persons in different locations—contains duplicates of the page or part so that every signature, mark or endorsement is included, and
- (e) for a signature, mark or endorsement written physically on a page or part—contains the actual signature, mark or endorsement.

**Example—**

A signature written by hand.

(2) Except as provided by subsection (1)(d), a page or part is required to be included in the original document only once.

#### **14I Signatory and witness may be outside jurisdiction**

A document may be witnessed under this Part even if the signatory or witness, or both,

are outside this jurisdiction if—

- (a) the document is made, or required to be signed, under an Act or law of this jurisdiction, or
- (b) the governing laws for the document are the laws of this jurisdiction.

#### **14J Place of execution**

- (1) For the purposes of another Act or law, the place at which a document witnessed under this Part is executed is the place at which the signatory was when the signatory signed the document.
- (2) If, because of section 14I, the place of execution is outside this jurisdiction, the laws of this jurisdiction are taken to apply in relation to the witnessing and execution of the document as if the place were in this jurisdiction.

#### **14K Regulations**

The regulations may set out methods, technologies or processes that, if used, will be taken to satisfy some or all of the requirements of this Part.

#### **14L Savings**

An endorsement that would have been satisfactory for the purposes of the [Electronic Transactions Regulation 2017](#), Schedule 1, clause 2(2)(d)(ii) had that paragraph not been repealed, is taken to be satisfactory for the purposes of section 14G(2)(d)(ii).

### **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.

#### **16 Transitional provisions—[Electronic Transactions Amendment Act 2010](#)**

- (1) Regulations made under this Act before the commencement of section 6A and in force immediately before that commencement have effect as if that section had been in force when they were made.
- (2) Subject to subsection (3)—
  - (a) section 14B extends to proposals made before the commencement date, and
  - (b) section 14C extends to actions carried out before the commencement date, and
  - (c) section 14D extends to statements, declarations, demands, notices or requests, including offers and the acceptance of offers, made or given before the

commencement date.

- (3) Subsection (2) and Part 2A do not apply in relation to contracts formed before the commencement date.
- (4) In subsections (2) and (3), **commencement date** means the date of commencement of Part 2A, as inserted by the *Electronic Transactions Amendment Act 2010*.

## Part 4

### 17, 18 (Repealed)

## Schedule 1 Courts—electronic case management systems

### 1 Definitions

- (1) In this Schedule—

**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 Schedule.

**ECM court** means a court in respect of which the use of an ECM system is authorised pursuant to an order in force under clause 3.

**ECM system** means an electronic case management system established under clause 2.

- (2) In this Schedule, 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.

### 2 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,
  - (h) to enable information concerning legal proceedings to be exchanged in electronic form between such persons or bodies as are prescribed by rules of court.
- (2) For the purposes of the *Government Information (Public Access) Act 2009*, 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.
- (3) An order establishing an electronic case management system under this clause may be published on the NSW legislation website or in such other manner as determined by the Attorney General.

**Editorial note—**

For establishment of electronic case management systems under this clause see Gazettes No 132 of 28.10.2005, p 9221 and No 75 of 9.6.2006, p 4246.

**3 Authorisation of use of ECM system in relation to courts**

The Attorney General may, by order published on the NSW legislation website, authorise the use of an ECM system by such courts, and for such purposes, as are specified in the order.

**4 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.

**5 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 subclause (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.

## **6 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.

## **7 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.

## **8 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.

## **9 Use of ECM system for the conduct of certain hearings**

- (1) This clause applies to any hearing of proceedings before an ECM court, other than a hearing conducted for the purpose of receiving oral evidence.
- (2) A hearing to which this clause 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.

## **10 Misdirected initiating process**

- (1) This clause 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 clause.

- (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 clause are taken to have been commenced in that court on the date on which they were originally commenced.

## **11 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.

## **12 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.

## **13 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.

## **14 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 Schedule, 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 Schedule, with respect to the ECM matters.

- (3) The following matters are **ECM matters** for the purposes of this clause—
- (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.

### **15 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 clause 3.
- (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.

### **16 Proceedings originating in non-ECM courts**

This Schedule 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.

**17 Proceedings on application for assessment of bill of costs**

For the purposes of this Schedule, proceedings on an application for the assessment of costs under the legal costs legislation (as defined in section 3A of the [Legal Profession Uniform Law Application Act 2014](#)) 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 clause 14.

**18 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.