

[Act 2000 No 8]



New South Wales

Electronic Transactions Bill 2000

Explanatory note

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

Overview of Bill

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

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be fixed by proclamation.

Clause 3 sets out the object of the proposed Act, which is to provide a regulatory framework that:

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

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

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

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

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

Part 2 Application of legal requirements to electronic communications

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

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

Division 2 Requirements under laws of this jurisdiction

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

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

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

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

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

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

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

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

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

Division 3 Other provisions relating to laws of this jurisdiction

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

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

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

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

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

Part 3 Miscellaneous

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