



Australian Capital Territory

Electronic Transactions Amendment Act 2012

A2012-14

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Australian Capital Territory

Electronic Transactions Amendment Act 2012

A2012-14

An Act to amend the *Electronic Transactions Act 2001*

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

1 Name of Act

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

2 Commencement

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

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

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

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

3 Legislation amended

This Act amends the *Electronic Transactions Act 2001*.

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

insert

- (2) Part 2A 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 taken to be 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- (c) a portion of an electronic communication containing an input error can be withdrawn in certain circumstances;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 New section 6A

in part 1, insert

6A Exemptions

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

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

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

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

omit

7 Writing Section 8, note

omit

8 Section 9

substitute

9 Signatures

- (1) If, under a territory law, a person's signature is required, that requirement is taken to have been met for an electronic communication if—
 - (a) a method is used to identify the person and to show the person's intention in relation to the information communicated; and
 - (b) the method was either—
 - (i) as reliable as was appropriate for the purpose for which the electronic communication was generated or communicated, in the circumstances, including any relevant agreement; or
 - (ii) proven in fact to have fulfilled the functions mentioned 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 using the method mentioned in paragraph (a).
- (2) This section does not affect the operation of any other territory law that provides 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 for an electronic communication to identify the originator of the communication and to show the originator's intention in relation to 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.

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

omit

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

omit

**11 Exemptions from this division
Section 12**

omit

12 Section 13

substitute

13 Time of dispatch

- (1) For a territory law, 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.

Example—par (b)

the exchange by parties of electronic communications through the same information system

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

- (2) This section 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 a territory law, 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 subsection (1), unless otherwise agreed between the originator and the addressee of the electronic communication, it is assumed that the electronic communication is capable of being retrieved by the addressee when it reaches the addressee's electronic address.
- (3) This section 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 a territory law, 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 subsection (1)—
 - (a) a party's place of business is taken to be the location indicated by the party, unless another party shows that the party making the indication does not have a place of business at the location; and
 - (b) if a party has not indicated a place of business and has only 1 place of business—that place is taken to be the party's place of business; and

- (c) if a party has not indicated a place of business and has more than 1 place of business—the place of business is that which has the closest relationship to the underlying transaction, taking into account the circumstances known to or contemplated by the parties at any time before or at the end of the transaction; and
- (d) if a party has not indicated a place of business and has more than 1 place of business, but paragraph (c) does not apply—the party’s principal place of business is taken to be the party’s only place of business; and
- (e) if a party is an individual and does not have a place of business—the party’s place of business is taken to be the party’s home address.

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

Note 2 **Home address**, for an individual, means the address of the place where the individual usually lives (see Legislation Act, dict, pt 1).

- (3) A location is not a place of business only because it 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 fact only that a party makes use of a domain name or electronic mail address connected to a particular country does not create a presumption that its place of business is located in the country.

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

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.

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

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

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

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

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

14D Error in electronic communications—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 relation to the formation or performance of a contract.
- (2) Subsection (3) applies if—
- (a) an individual makes an input error in an electronic communication exchanged with the automated message system of another party; and

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

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

- (3) The individual, or the party on whose behalf the individual was acting, has the right to withdraw the part of the electronic communication in which the input was made if—
 - (a) the individual, or the party on whose behalf the individual was acting, notifies the other party of the error as soon as possible after becoming aware of the error and indicates that he or she made an error in the electronic communication; and
 - (b) the individual, or the party on whose behalf the individual was acting, has not used or received any material benefit or value from the goods or services (if any) received from the other party.
- (4) The right of withdrawal of a part of an electronic communication under this section is not of itself a right to rescind or otherwise terminate a contract.
- (5) The consequences (if any) of the exercise of the right of withdrawal of a portion of an electronic communication under this section must be decided in accordance with any applicable rule of law.

Note In some circumstances the withdrawal of a part of an electronic communication may invalidate the entire communication or make it ineffective for the purposes of contract formation (see the UNCITRAL explanatory note for the United Nations Convention on the Use of Electronic Communications in International Contracts, par 241, accessible at www.uncitral.org.)

14E Application of Act in relation to contracts

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

- (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) another State or Territory law (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.

Example—circumstance where pt 2 may not apply of its own force

a contract negotiated in a State or Territory with a supplier located overseas

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

15 New part 10

insert

Part 10 Transitional—Electronic Transactions Amendment Act 2012

50 Transitional—Electronic Transactions Amendment Act 2012

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

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

(3) In this section:

commencement date means the day part 2A commences.

51 Expiry—pt 10

This part expires on the day it commences.

16 Dictionary, note 2

insert

- home address
- individual
- territory law

17 Dictionary, new definitions

insert

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 in relation 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 an individual each time an action is started or a response is generated by the system.

18 Dictionary, definition of law of this jurisdiction

omit

19 Dictionary, new definitions

insert

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 in relation to the electronic communication.

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

20 Dictionary, definition of *place of business*

substitute

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

21 Dictionary, definition of *transaction*

substitute

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 relation to the formation or performance of a contract, agreement or other arrangement; and
- (c) any transaction of a non-commercial nature.

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

omit

law of this jurisdiction

substitute

territory law

in

- section 4
- sections 7 to 11
- section 14

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

omit

laws of this jurisdiction

substitute

territory laws

in

- division 2.1 heading
- division 2.2 heading
- 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 11 April 2012.

3 Republications of amended laws

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

I certify that the above is a true copy of the Electronic Transactions Amendment Bill 2012, which was passed by the Legislative Assembly on 27 March 2012.

Clerk of the Legislative Assembly

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