

ELECTRONIC TRANSACTIONS AMENDMENT (ELECTORAL NOMINATIONS)
REGULATIONS 2019

EXPLANATORY STATEMENT

Issued by authority of the Attorney-General

in compliance with section 15J of the *Legislation Act 2003*

PURPOSE AND OPERATION OF THE INSTRUMENT

The *Electronic Transactions Act* (Cth) (the Act) ensures that a transaction under a Commonwealth law will not be invalid simply because it was conducted through electronic communication. If a Commonwealth law requires an individual to give information in writing, provide a handwritten signature, produce a document in material form or record or retain information, the Act operates to ensure these things can be done electronically. The Act applies to all laws of the Commonwealth unless, pursuant to section 7A of the Act, they are specifically exempted by the *Electronic Transactions Regulations 2000* (the current Regulations) or are exempted pursuant to section 7B of the Act.

Item 25(b) in Schedule 1 of the *Electronic Transactions Regulations 2000* (the current Regulations) operates to exclude the application of the Act to Part XIV of the *Commonwealth Electoral Act 1918*. The effect of this exemption means that candidates seeking to nominate for Commonwealth elections must do so under the current paper-based process.

Section 16 of the Act provides that the Governor-General may make regulations prescribing all matters required or permitted to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the proposed *Electronic Transactions Amendment (Electoral Nominations) Regulations 2019* (proposed Regulations) is to amend the current Regulations by removing Item 25(b) of Schedule 1 to ensure that electoral candidates seeking to nominate for Commonwealth elections are able to lodge their nominations electronically.

The Regulations remove this exemption to ensure that electoral candidates seeking to nominate for Commonwealth elections are able to lodge their nominations electronically.

Details of the proposed Regulations are set out in the [Attachment](#).

CONSULTATION

Consistent with the requirements of the *Legislation Act 2003*, the Department of Finance was consulted extensively throughout this process.

REGULATION IMPACT STATEMENT

The Office of Best Practice Regulation was consulted and a Regulation Impact Statement was not required.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

This disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

The *Electronic Transactions Act 1999* (the Act) provides legal validity for transactions that take place wholly or partly by means of one or more electronic communication. It provides a facilitative framework to enable a requirement that a document be in writing, contain a signature, or be produced or retained, to be met in an electronic form. Schedule 1 of the *Electronic Transactions Regulations 2000* (the current Regulations) contains an exhaustive list of exceptions to the operation of the Act, or particular provisions of the Act.

This disallowable Legislative Instrument removes an exemption (Item 259b) in Schedule 1) from the current Regulations. That exemption relates to Part XIV of the *Commonwealth Electoral Act 1918*. Removal of this exemption will allow nominations by candidates for Commonwealth elections to be lodged electronically. Nomination currently occurs through a paper-based process.

Human rights implications

This disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR) provides that no one shall be subjected to arbitrary or unlawful interference with their privacy. The right to privacy may be engaged if the Regulations involve the collection, security, use, disclosure or publication of personal information. In addition, Article 25 of the ICCPR provides for the right to take part in public affairs and elections. This right will be engaged if the legislation or policy regulates the conduct of elections and the electoral process.

Repealing the exceptions applicable to particular provisions of Commonwealth law enables, but does not compel or mandate, the use of electronic communications by business and individuals in their dealings with government. It will merely allow for a requirement or permission to provide information in writing under a law of the Commonwealth to be fulfilled in electronic form, in addition

to written paper form. Specifically, the removal of the exemption in Item 25(b) of the Regulations would mean that the candidate nomination process can be completed electronically, thus providing another method in addition to the current paper-based process. As the Regulations do not insert a new right or extend any existing rights, Articles 17 and 25 of the ICCPR are not engaged.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

NOTES ON SECTIONS

PART 1 – Preliminary

Section 1 – Name

Section 1 provides that the title of the instrument is the *Electronic Transactions Amendment (Electoral Nominations) Regulations 2019* (the Regulations).

Section 2 – Commencement

This section provides that the Regulations will commence on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Regulations are made under the *Electronic Transactions Act 1999* as allowed by section 16.

Section 4 – Schedules

This section outlines that the item specified in a Schedule 1 will be amended or repealed as set out in the Schedule.

Schedule 1

Schedule 1 provides that Item 25, column headed “Commonwealth law” is repealed.