

ELECTRONIC TRANSACTIONS AMENDMENT REGULATIONS 2022

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 purpose of the *Electronic Transactions Amendment Regulations 2022* is to amend the *Electronic Transactions Regulations 2020* to provide an updated list of Commonwealth laws that are exempt from the *Electronic Transactions Act 1999* (the Act).

The *Electronic Transactions Regulations 2020* (the Principal Regulations) provides a list of Commonwealth laws that are exempt from the Act.

The Act facilitates the use of electronic transactions, and enables business and the community to use electronic communications in their dealings with the government. The Act ensures that a transaction under a Commonwealth law will not be invalid simply because it was conducted by means of electronic communication. If a Commonwealth law requires an individual to give information in writing, provide a signature, produce a document in material form or record or retain information, the Act operates to ensure those requirements are fulfilled if provided electronically.

The Act is based upon principles of functional equivalence, which means that paper-based commerce and electronic commerce should be treated equally by the law, and technology neutrality, which means that the law should not discriminate between forms of technology. The Act does not remove any legal obligations that may be imposed upon an individual by other Commonwealth laws.

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 Act applies to all laws of the Commonwealth unless, pursuant to section 7A of the Act, they are specifically exempted by the Principal Regulations or are exempted pursuant to section 7B of the Act. Schedule 1 to the Principal Regulations contains the list of Commonwealth laws that are exempt from the application of the Act. These exemptions are necessary to account for circumstances where it is not appropriate to provide information, documents or signatures electronically.

The *Electronic Transactions Amendment Regulations 2022* (the Amendment Regulations) amend the Principal Regulations to provide an updated list of Commonwealth laws that are exempt from the Act. The amendments ensure that the Act operates and reflects current and emerging digital channels and consumer and business preferences and supports the Australian Government's Digital and Deregulation Agendas.

The Principal Regulations contain 60 exemptions. To ensure that the Regulations are fit for purpose, exemptions are regularly reviewed. Business practices, and consumer behaviours and expectations have evolved since many of the exemptions were introduced. The Amendment Regulations removes five exemptions.

The removal of current exemptions to the Act supports the Government's digital agenda and Digital Economy Strategy, which sets out how Australia will secure its future as a modern and leading digital economy and society by 2030. Removing further exemptions facilitates the application of the Act to the previously exempt legislation. Transactions executed under the laws removed from the Principal Regulations are, under the Amended Regulations, valid if they take place wholly or partly by means of electronic communications. The reduction in the number of exemptions to the Act reduces barriers to electronic communications and e-commerce for businesses and the community.

The Act is a law of general application. Removal of exemptions from the Principal Regulations makes laws subject to the application of the Act. Wider application of the Act enables, but does not compel or mandate, the use of electronic communications by business and individuals in their dealings with government.

The Regulations commence on the day after they are registered on the Federal Register of Legislation.

Details of the Regulations are set out in **Attachment A**.

CONSULTATION

Consistent with the requirements of the *Legislation Act 2003*, the Amendment Regulations have been informed by consultation with the government agencies that have policy responsibility for the legislation to be removed from the Principal Regulations. Removal of exemptions facilitates additional avenues of communication with the government but does not prevent people communicating with government agencies through paper-based correspondence.

The following government agencies were consulted by the Deregulation Taskforce to facilitate removal of exemptions under the Amendment Regulations:

Department of the Prime Minister and Cabinet

Department of Foreign Affairs and Trade

Department of Home Affairs

Department of Defence

Australian Public Service Commission

Further details of the Regulations are set out in **Attachment A**.

REGULATION IMPACT STATEMENT

The Office of Best Practice Regulation assessed the Regulations as having a minor regulatory impact on businesses, community organisations and individuals (OBPR Reference: ID25033). As such, 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

Electronic Transactions Amendment Regulations 2022

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) legally validates transactions under Commonwealth law taken place wholly or partly by means of electronic communications. This framework allows documents that are required in writing, contain a signature, or are to be produced or retained, to be met in an electronic form. 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 2020* or are exempted pursuant to section 7B of the Act.

Schedule 1 of the Regulations contains a list of Commonwealth laws that are exempted from the operation of the Act, or particular provisions of the Act. These exemptions are necessary to account for circumstances where it is not appropriate to provide information, documents or signatures electronically.

The purpose of the *Electronic Transactions Amendment Regulations 2022* (the Amendment Regulations) is to ensure that the exemptions to the operation of the Act remain relevant in light of current and emerging digital channels and consumer preferences. The exemptions provided in Schedule 1 of the Regulations are regularly reviewed to reflect evolving business practices and consumer behaviours. Five current exemptions have now been identified as conducive to electronic communications, and are removed from Schedule 1 of the *Electronic Transactions Regulations 2020*.

Human rights implications

Item 1 of the Amendment Regulations amends the *Electronic Transactions Regulations 2020* by removing five exemptions from Schedule 1. This item does not raise human rights issues as the amendments will reduce regulatory impact as far as practicable and increase the certainty and availability of electronic transactions.

Removing the exemptions from the operation of the Act for 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. Removing exemptions merely allows 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.

Conclusion

Item 1 of this Instrument does not raise human rights issues.

Details of the *Electronic Transactions Amendment Regulations 2022*

Section 1 – Name

This section provides that the title of the proposed instrument is the *Electronic Transactions Amendment Regulations 2022*.

Section 2 – Commencement

This regulation provides that the Regulations will commence on the day after they are registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Amendment Regulations are made under the *Electronic Transactions Act 1999*.

Section 4 – Schedules

This section notes that instruments to be specified in a Schedule to this instrument will be amended or repealed. Any other item in a Schedule to this instrument will have effect according to its terms.

Schedule 1– Laws of the Commonwealth to which certain provisions of the Act do not apply

Section 1 – Clause 1 of Schedule 1 (table items 14, 15, 57, 58 and 77)

The above items (which are also extracted below) will be repealed from the table in Schedule 1 effecting the removal of those exemptions to the Act. The Act is a law of general application and applies in the absence of an exemption. The effect of removing these 5 exemptions is to subject each of those laws to the application of the Act. Application of the Act will ensure that a transaction will not be invalid simply because it was conducted by means of electronic communications. Transactions that have taken place by electronic communications are recognised as functionally equivalent to paper-based counterparts. The removal of exemptions facilitates additional avenues of communication with the government but does not prevent people communicating with government agencies through paper-based correspondence. The reduction in the number of exemptions to the Act reduces barriers to electronic communications and e-commerce for businesses and the community.

Current exemptions to be repealed

<u>Item</u>	<u>Exemption</u>	<u>Parts of the <i>Electronic Transactions Act 1999</i> which do not apply to the listed exemption</u>
14	<i>Chemical Weapons (Prohibition) Act 1994</i>	Subsection 8(1), Division 2 of Part 2 and sections 14, 14A, 14B and 15

15	<i>Chemical Weapons (Prohibition) Regulations 1997</i>	Subsection 8(1), Division 2 of Part 2 and sections 14, 14A, 14B and 15
57	<i>Nuclear Non-Proliferation (Safeguards) Act 1987</i>	Subsection 8(1), Division 2 of Part 2 and sections 14, 14A, 14B and 15
58	<i>Nuclear Non-Proliferation (Safeguards) Act Regulations 1987</i>	Subsection 8(1), Division 2 of Part 2 and sections 14, 14A, 14B and 15
77	<i>Public Service Act 1999, section 22</i>	Subsection 8(1), Division 2 of Part 2 and sections 14, 14A, 14B and 15