

Queensland



**ELECTRONIC
TRANSACTIONS
(QUEENSLAND) ACT 2001**

Act No. 42 of 2001

Queensland



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Queensland



Electronic Transactions (Queensland) Act 2001

Act No. 42 of 2001

An Act to facilitate electronic transactions, and for other purposes

[Assented to 7 June 2001]

The Parliament of Queensland enacts—

CHAPTER 1—PRELIMINARY

1 Short title

This Act may be cited as the *Electronic Transactions (Queensland) Act 2001*.

2 Commencement

This Act commences on a day 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 Queensland; 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

The following is a simplified outline of this Act—

- (a) a transaction is not invalid under a State law merely because it took place by 1 or more electronic communications;
- (b) the following requirements imposed under a State law 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 keep a document;
- (c) for a State law, 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 under a State law only if the communication was sent by the purported originator or with the purported originator's authority.

5 Attachment—flowchart

(1) The attachment to this Act shows the way in which some of the definitions in the dictionary and the concepts underlying this Act are linked when an electronic communication is used for a transaction.

(2) The attachment does not form part of this Act.

(3) If the Act is amended, the attachment must be revised so that it is accurate.

(4) The revision must be made in the first reprint of this Act after the amendments.

6 Definitions

The dictionary in the schedule defines particular words used in this Act.

7 Act binds all persons

This Act binds all persons including the State and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.

CHAPTER 2—REQUIREMENTS FOR ELECTRONIC COMMUNICATIONS

PART 1—GENERAL RULE ABOUT VALIDITY OF TRANSACTIONS FOR STATE LAWS

8 Validity of electronic transactions

(1) A transaction is not invalid under a State law merely because it took place wholly or partly by 1 or more electronic communications.

(2) However, the general rule in subsection (1) does not apply for the validity of a transaction to the extent to which another, more specific, provision of this chapter deals with its validity.

PART 2—REQUIREMENTS UNDER STATE LAWS

Division 1—Writing

9 Application

This division applies to a requirement or permission to give information, whether the expression give, send or serve, or another expression, is used.

10 Definitions for div 1

In this division—

“**give information**” includes, but is not limited to, the following—

- (a) make an application;
- (b) make or lodge a claim;
- (c) give, send or serve a notification;
- (d) lodge a return;
- (e) make a request;

- (f) make a declaration;
- (g) lodge or issue a certificate;
- (h) make, vary or cancel an election;
- (i) lodge an objection;
- (j) give a statement of reasons.

11 Requirement to give information in writing

(1) If, under a State law, a person is required to give information in writing, the requirement is taken to have been met if the person gives the information by an electronic communication in the circumstances stated in subsection (2).

(2) The circumstances are that—

- (a) at the time the information was given, it was reasonable to expect 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 an electronic communication.

12 Permission to give information in writing

(1) If, under a State law, a person is permitted to give information in writing, the person may give the information by an electronic communication in the circumstances stated in subsection (2).

(2) The circumstances are that—

- (a) at the time the information was given, it was reasonable to expect 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 an electronic communication.

13 Other particular laws not affected

Sections 11 and 12 do not affect the operation of another State law that makes provision about 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 a particular kind of electronic communication.

Division 2—Signatures

14 Requirement for signature

If, under a State law, a person's signature is required, the requirement is taken to have been met for an electronic communication if—

- (a) a method is used to identify the person and to indicate the person's approval of the information communicated; and
- (b) having regard to all the relevant circumstances when the method was used, the method was as reliable as was appropriate for the purposes for which the information was communicated; and
- (c) the person to whom the signature is required to be given consents to the requirement being met by using the method mentioned in paragraph (a).

15 Other particular laws not affected

Section 14 does not affect the operation of another State law 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 for an electronic communication to identify the originator of the communication and to indicate the originator's approval of the information communicated.

Division 3—Production of document

16 Requirement to produce document

(1) If, under a State law, a person is required to produce a document that is in the form of paper, an article or other material, the requirement is taken to have been met if the person produces, by an electronic communication, an electronic form of the document in the circumstances stated in subsection (2).

(2) The circumstances are that—

- (a) having regard to all the relevant circumstances when the communication was sent, the method of generating the electronic form of the document provided a reliable way of maintaining the integrity of the information contained in the document; and
- (b) when the communication was sent, it was reasonable to expect 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 an electronic communication, of an electronic form of the document.

17 Permission to produce a document

(1) If, under a State law, a person is permitted to produce a document in the form of paper, an article or other material, then, instead of producing the document in that form, the person may produce, by an electronic communication, an electronic form of the document in the circumstances stated in subsection (2).

(2) The circumstances are that—

- (a) having regard to all the relevant circumstances when the communication was sent, the method of generating the electronic form of the document provided a reliable way of maintaining the integrity of the information contained in the document; and
- (b) when the communication was sent, it was reasonable to expect 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 an electronic communication, of an electronic form of the document.

(3) For subsection (2)(a), the integrity of information contained in a document is maintained only if the information has remained complete and unaltered, apart from—

- (a) the addition of any endorsement; or
- (b) any immaterial change;

arising in the normal course of communication, storage or display.

18 Other particular laws not affected

Sections 16 and 17 do not affect the operation of another State law 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 a particular kind of electronic communication.

Division 4—Recording and keeping information and documents

19 Recording information

(1) If, under a State law, a person is required to record information in writing, the requirement is taken to have been met if the person records the information in electronic form in the circumstances stated in subsection (2).

(2) The circumstances are that—

- (a) at the time the information was recorded, it was reasonable to expect the information would be readily accessible so as to be useable for subsequent reference; and
- (b) if a regulation requires the information to be recorded on a particular kind of data storage device, the requirement has been met.

20 Keeping written documents

(1) If, under a State law, a person is required to keep, for a particular period, a document that is in the form of paper, an article or other material, the requirement is taken to have been met if the person keeps, or causes another person to keep, an electronic form of the document for the period in the circumstances stated in subsection (2).

(2) The circumstances are that—

- (a) having regard to all the relevant circumstances when the electronic form of the document was generated, the method of generating the electronic form of the document provided a reliable way of maintaining the integrity of the information contained in the document; and
- (b) when the electronic form of the document was generated, it was reasonable to expect 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 a regulation requires the electronic form of the document to be kept on a particular kind of data storage device, the requirement has been met for the period.

(3) For subsection (2)(a), the integrity of information contained in a document is maintained only if the information has remained complete and unaltered, apart from—

- (a) the addition of any endorsement; or
- (b) any immaterial change;

arising in the normal course of communication, storage or display.

21 Keeping electronic communications

(1) If, under a State law, a person (“**keeper**”) is required to keep, for a particular period, information that was the subject of an electronic communication, the requirement is taken to have been met if the keeper keeps, or causes another person to keep, in electronic form, the information for the period in the circumstances stated in subsection (2).

(2) The circumstances are that—

- (a) at the commencement of the keeping of the information, it was reasonable to expect 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 commencement of the keeping of the information, the method of keeping the information in electronic form provided a reliable way of maintaining the integrity of the information contained in the electronic communication; and
- (c) during the period, the keeper also keeps, or causes the other person to keep, in electronic form, such additional information obtained by the keeper as is enough to enable the identification of the following—
 - (i) the origin of the electronic communication;
 - (ii) the destination of the electronic communication;
 - (iii) when the electronic communication was sent;
 - (iv) when the electronic communication was received; and
- (d) at the commencement of the keeping of the additional information mentioned in paragraph (c), it was reasonable to expect the additional information would be readily accessible so as to be useable for subsequent reference; and
- (e) if a regulation requires the information to be kept on a particular kind of data storage device—the requirement has been met for the period.

(3) For subsection (2)(b), the integrity of information that was the subject of an electronic communication is maintained only if the information has remained complete and unaltered, apart from—

- (a) the addition of any endorsement; or
- (b) any immaterial change;

arising in the normal course of communication, storage or display.

PART 3—OTHER PROVISIONS ABOUT STATE LAWS

Division 1—Application

22 Application of part 3

This part applies for each State law.

Division 2—Time of dispatch and receipt

23 Time of dispatch

(1) If an electronic communication enters a single information system outside the control of the originator of the communication, then, unless otherwise agreed between the originator and the addressee of the communication, the dispatch of the communication occurs when it enters the information system.

(2) If an electronic communication enters successively 2 or more information systems outside the control of the originator of the communication, then, unless otherwise agreed between the originator and the addressee of the communication, the dispatch of the communication occurs when it enters the first of the information systems.

24 Time of receipt

(1) If the addressee of an electronic communication has designated an information system to receive electronic communications, then, unless otherwise agreed between the originator of the communication and the addressee, the time of receipt of the communication is the time when it enters the information system.

(2) If the addressee of an electronic communication has not designated an information system to receive electronic communications, then, unless otherwise agreed between the originator of the communication and the addressee, the time of receipt of the communication is the time when it comes to the attention of the addressee.

25 Place of dispatch and receipt

(1) Unless otherwise agreed between the originator of an electronic communication and the addressee of the communication—

- (a) the communication is taken to have been dispatched from the originator's place of business; and
- (b) the communication is taken to have been received at the addressee's place of business.

(2) For subsection (1)—

- (a) if the originator or addressee of the communication has more than 1 place of business, and 1 of the places (the “**relevant place**”) has a closer relationship to the underlying transaction the communication is about—the relevant place is taken to be the originator's or addressee's only place of business; and
- (b) if the originator or addressee has more than one place of business, but paragraph (a) does not apply—the originator's or addressee's principal place of business is taken to be the originator's or addressee's only place of business; and
- (c) if the originator or addressee does not have a place of business—the place where the originator or addressee ordinarily resides is taken to be originator's or addressee's place of business.

Division 3—Other provisions

26 Attribution of electronic communications

(1) For a State law, unless otherwise agreed between the purported originator of an electronic communication and the addressee of the communication, the purported originator of the communication is bound by the communication only if it was sent by the purported originator or with the purported originator's authority.

(2) Subsection (1) does not limit a State law that provides 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.

CHAPTER 3—MISCELLANEOUS

27 Regulation-making power

The Governor in Council may make regulations under this Act.

SCHEDULE

DICTIONARY

section 6

“consents” 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* (Cwlth).

“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 another article or device.

“electronic communication” means—

- (a) a communication of information in the form of data, text or images by guided or unguided electromagnetic energy; or
- (b) a communication of information in the form of sound by guided or unguided electromagnetic energy, if the sound is processed at its destination by an automated voice recognition system.

“give information”, for chapter 2, part 2, division 1, see section 10.

“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.

“non-profit body” means a body that—

- (a) is not carried on for profit or gain to its individual members; and
- (b) is, under the body’s constitution, prohibited from making any distribution, whether in money, property or otherwise, to its members.

SCHEDULE (continued)

“place of business”, for a government, an authority of a government or a non-profit body, means a place where any operations or activities are carried out by that government, authority or body.

“State law” means—

- (a) any law in force in the State, whether written or unwritten; or
- (b) any instrument made or having effect under a law mentioned in paragraph (a);

but does not include—

- (c) the Corporations Law or the Corporations Regulations; or
- (d) a law of the Commonwealth, whether written or unwritten, or an instrument made or having effect under a written or unwritten law of the Commonwealth.

“transaction” includes any transaction in the nature of a contract, agreement or other arrangement, and also includes any transaction of a non-commercial nature.

ATTACHMENT

section 5



