

ELECTRONIC TRANSACTIONS (QUEENSLAND) BILL 2001

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The Electronic Transactions (Queensland) Bill 2001 aims to remove any existing legal impediments to the use of electronic transactions. The Bill is designed to ensure that a transaction is not invalid simply because it took place by means of an electronic form of communication. It is intended that the Bill will provide a framework at the State level which will:

- facilitate the use of electronic transactions;
- promote business and community confidence in the use of electronic transactions; and
- enable business and the community to use electronic communications in their dealings with government.

The Bill, which is complementary to the *Electronic Transactions Act 1999* (Cth), removes legal impediments to electronic commerce based on the principles of media and technology neutrality. This means that the law does not discriminate between different forms of technology and it treats paper-based commerce and electronic commerce equally.

Reasons for the objectives and how they will be achieved

In October 1998, all Attorneys-General at a meeting of the Standing Committee of Attorneys-General [SCAG] agreed in principle to the Commonwealth's proposal for a national uniform legislative regime and to enact model electronic commerce legislation based on the recommendations of the Report of the Electronic Commerce Expert Group and relevant articles of the United Nations Commission on International Trade Law Model Law on Electronic Commerce.

This Bill implements this SCAG decision. It is also important to provide a legal basis to encourage the development and use of electronic commerce so as to increase business activity in this State as well as gross state product.

Administrative cost to Government of implementation

This Bill will not result in any costs to government.

Fundamental legislative principles

There are no breaches of fundamental legislative principles. In fact this Bill is almost identical to the New South Wales and Victorian legislation, but departs from them in several important areas to ensure compliance with fundamental legislative principles as required by the *Legislative Standards Act 1992*.

One such principle is the need to have regard to the institution of Parliament by minimising inappropriate delegations of legislative power to the Executive such as the use of Henry VIII clauses. Such clauses give power to the Executive, by means of subordinate legislation to override the intention of Parliament as expressed in an Act.

Consultation

This Bill is not identical to the *Electronic Transactions Act 1999* (Cth), but similar to the extent that it closely mirrors the substantive provisions of the Commonwealth's Act. The Commonwealth's Act was exposed for public comment by way of the use of the Commonwealth Attorney-General's Departmental website. Accordingly, it has not been necessary to consult widely on the development of this Bill. Also the Queensland Law Society Inc, Bar Association of Queensland, Queensland Council for Civil Liberties, legal academics and e-commerce lawyers have been consulted on the content of this Bill.

NOTES

The Bill has three chapters, a schedule and an attachment.

CHAPTER 1—PRELIMINARY

Clause 1 is the short title to the statute.

Clause 2 provides for commencement of the Bill on a day to be fixed by proclamation.

Clause 3 sets out the object of the proposed Bill, which 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.

Clause 4 sets out a simplified outline of the proposed Bill 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 keep a document.
- (c) For the purposes of a law of the State, a 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 purported originator's authority.

Clause 5 contains a flowchart which does not form part of the Bill, but shows the way in which some of the definitions and underlying concepts in the Bill are linked.

Clause 6 provides for a dictionary in the schedule which defines certain words and expressions used in the Bill, of which the more significant ones are *consents*, *electronic communication*, *information*, *information system* and *transaction*.

Clause 7 provides that the Bill is to bind all persons including the State and, so far as the legislative power of 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

Clause 8 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 this chapter that deal with the validity of transactions.

PART 2—REQUIREMENTS UNDER STATE LAWS

Division 1—Writing

Clause 9 provides that this division applies to a requirement or permission to give information, whether the expression give, send or serve, or another expression, is used.

Clause 10 gives an inclusive definition of the term “give information”.

Clauses 11 and 12 provide 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 communications. 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 13 makes it clear that this Bill does not affect the operation of another State law that specifies the way in which electronic communications must be made. This is intended to include existing laws that specify particular information technology requirements such as software requirements.

Division 2—Signatures

Clause 14 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 15 makes it clear that this Bill does not affect the operation of another State law that specifies the use of any electronic signature method, however described. This provision is intended to have a similar purpose and operation to *Clause 13*. The use of different language in paragraphs (a) and (b) to describe the signature method is intended to capture any existing laws that use these terms as well as laws that generally comply with paragraph (c).

Division 3– Production of document

Clauses 16 and 17 provide 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 18 makes it clear that this Bill does not affect the operation of another State law dealing with the production of electronic forms of documents. This provision is intended to have a similar purpose and operation to *Clause 13*.

Division 4– Recording and keeping information and documents

Clauses 19 to 21 inclusive provides that a person who, under a law of the State, is required to record information in writing, to keep a document in hard copy or to keep information the subject of an electronic communication, may record or keep the information in electronic form. Generally speaking, for an electronic form of recording or keeping 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 Bill 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 kept:
 - (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 kept; and

- (ii) the method for retaining information must provide a reliable means of assuring that the integrity of the information is maintained.

PART 3—OTHER PROVISIONS ABOUT STATE LAWS

Division 1— Application

Clause 22 provides that part 3 of the Bill applies for each State law.

Division 2— Time of dispatch and receipt

Clauses 23 to 25 inclusive establish 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.

Clause 26 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.

CHAPTER 3—MISCELLANEOUS

Clause 27 empowers the Governor in Council to make regulations under this Bill.

SCHEDULE

Dictionary

This dictionary defines key terms used throughout the Bill.

ATTACHMENT

The Attachment contains a flowchart which shows the way in which some of the definitions contained in the dictionary and underlying concepts in the Bill are linked when an electronic communication is used for a transaction.