

Queensland



ELECTRONIC TRANSACTIONS (QUEENSLAND) ACT 2001

**Reprinted as in force on 1 November 2002
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Reprint No. 1

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Also see endnotes for information about when provisions commenced.

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Queensland



**ELECTRONIC TRANSACTIONS
(QUEENSLAND) ACT 2001**

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ELECTRONIC TRANSACTIONS (QUEENSLAND) ACT 2001

[as amended by all amendments that commenced on or before 1 November 2002]

An Act to facilitate electronic transactions, and for other purposes

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 schedule 2 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.

7A Act does not apply to particular requirements etc.

(1) This Act does not apply to—

- (a) a State law mentioned in schedule 1, part 1; or
- (b) a requirement or permission of a kind mentioned in schedule 1, part 2.

(2) Subsection (1)(a) and schedule 1, part 1 expire 2 years after this section commences.

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.

(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) immaterial change;

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

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 1**EXCLUDED STATE LAWS, REQUIREMENTS AND
PERMISSIONS**

section 7A

PART 1—ACTS*Associations Incorporation Act 1981**Bills of Sale and Other Instruments Act 1955**Business Names Act 1962**Charitable Funds Act 1958**Collections Act 1966**Consumer Credit (Queensland) Act 1994**Consumer Credit Code**Cooperatives Act 1997**Disposal of Uncollected Goods Act 1967**Fair Trading Act 1989**Funeral Benefit Business Act 1982**Hire-purchase Act 1959**Land Sales Act 1984**Liens on Crops of Sugar Cane Act 1951**Motor Vehicles Securities Act 1986**Partnership Act 1891**Partnership (Limited Liability) Act 1988**Pawnbrokers Act 1984**Property Agents and Motor Dealers Act 2000**Retirement Villages Act 1999*

SCHEDULE 1 (continued)

Second-hand Dealers and Collectors Act 1984

Security Providers Act 1993

Storage Liens Act 1973

Trade Measurement Act 1990

Trade Measurement Administration Act 1990

Travel Agents Act 1988

Traveller Accommodation Providers (Liability) Act 2001

PART 2—EXCLUDED REQUIREMENTS AND PERMISSIONS

- 1.** A requirement or permission for a person to file a document with a court or tribunal for a proceeding.
- 2.** A requirement or permission for a person to sign a document to be filed with a court or tribunal for a proceeding.
- 3.** A requirement or permission for a person to produce a document—
 - (a) to a court or tribunal in a proceeding; or
 - (b) to a party to a proceeding for the proceeding.
- 4.** A requirement or permission for a person to retain a document that has been—
 - (a) filed with, or produced to, a court or tribunal in a proceeding; or
 - (b) admitted in evidence in a proceeding before a court or tribunal;
or
 - (c) issued by a court or tribunal for a proceeding.
- 5.** A requirement or permission for a document to be served personally or by post.

SCHEDULE 1 (continued)

6. A requirement or permission for a document to be attested, authenticated, verified or witnessed by a person other than the author of the document.

7. An authorisation under the *Trust Accounts Act 1973*.

SCHEDULE 2

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 2 (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);

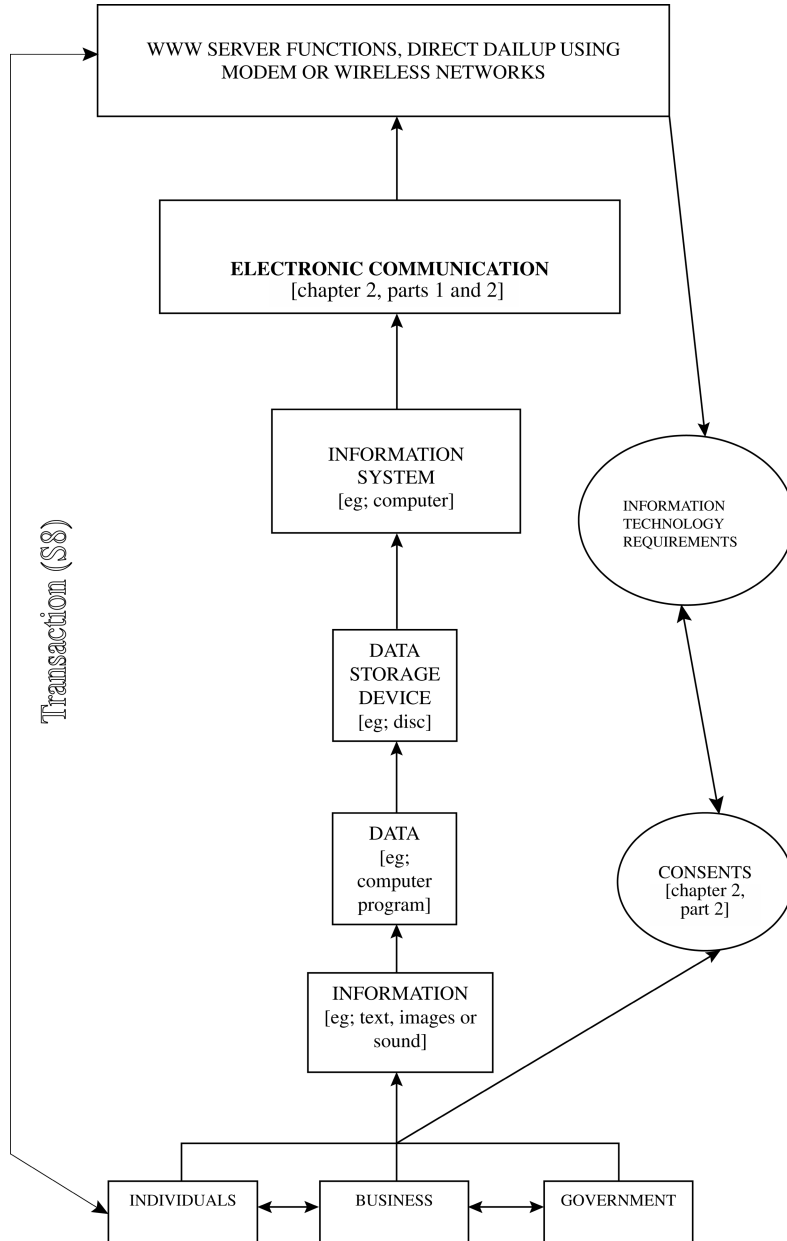
but does not include—

- (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



ENDNOTES

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 November 2002. Future amendments of the Electronic Transactions (Queensland) Act 2001 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

4 List of legislation

Electronic Transactions (Queensland) Act 2001 No. 42

date of assent 7 June 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 November 2002 (2002 SL No. 286) (proposed commencement 8 June 2003 (automatic commencement under AIA s 15DA(2) (2002 SL No. 118 s 3))

amending legislation—

Justice and Other Legislation (Miscellaneous Provisions) Act 2002 No. 34 s 1, pt 5, s 15 sch 2

date of assent 16 August 2002

commenced on date of assent

5 List of annotations

Definitions

s 6 amd 2002 No. 34 s 15 sch 2

Act does not apply to particular requirements etc.

s 7A ins 2002 No. 34 s 16

(1)(a) exp 1 November 2004 (see s 7A(2))

Requirement to produce document

s 16 amd 2002 No. 34 s 17

SCHEDULE 1—EXCLUDED STATE LAWS, REQUIREMENTS AND PERMISSIONS

ins 2002 No. 34 s 18

pt 1 exp 1 November 2004 (see s 7A(2))

SCHEDULE 2—DICTIONARY

sch 2 hdg (prev sch hdg) renum 2002 No. 34 s 15 sch 2