

# Electronic Transactions Bill 2011

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**Defined Terms**

Western Australia

LEGISLATIVE ASSEMBLY

## **Electronic Transactions Bill 2011**

**A Bill for**

**An Act to facilitate electronic transactions, to repeal the *Electronic Transactions Act 2003* and in consequence amend other Acts and for other purposes.**

The Parliament of Western Australia enacts as follows:

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**Part 1 — Preliminary**

**1. Short title**

This is the *Electronic Transactions Act 2011*.

**2. Commencement**

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) section 26 —
  - (i) if the *Criminal Code Amendment (Identity Crime) Act 2010* section 5 (**section 5**) comes into operation on or before the day on which section 24 comes into operation — when section 24 comes into operation; or
  - (ii) otherwise — when section 5 comes into operation;
- (c) the provisions of the Act other than sections 1, 2 and 26 — on a day fixed by proclamation, and different days may be fixed for different provisions.

**3. Object**

The object of this Act is to provide a regulatory framework that —

- (a) recognises the importance of the electronic communication of information to the future economic and social prosperity of Western Australia; and
- (b) facilitates the use of electronic communication as a way of entering into transactions; and
- (c) promotes business and community confidence in the use of electronic communication as a way of entering into transactions; and

- 1 (d) enables business and the community to use electronic  
2 communication in their dealings with government.

3 **4. Simplified outline**

4 (1) This section contains a simplified outline of this Act, intended  
5 as a guide to the general scheme and effect of the Act.

6 (2) This Act provides —

- 7 (a) that, with certain exceptions, a transaction is not invalid  
8 for the purposes of a law of the State because it took  
9 place by electronic communication;
- 10 (b) that things that can or have to be done under a law of the  
11 State in relation to any of the following matters can  
12 generally be done by electronic communication —
- 13 (i) giving information in writing;  
14 (ii) providing a signature;  
15 (iii) producing a document;  
16 (iv) recording information;  
17 (v) retaining a document;
- 18 (c) for determining the time and place of the dispatch and  
19 receipt of an electronic communication for the purposes  
20 of a law of the State;
- 21 (d) that the purported originator of an electronic  
22 communication is bound by it for the purposes of a law  
23 of the State only if the communication was sent by the  
24 purported originator or with the authority of the  
25 purported originator.

26 (3) This Act also contains provisions applying to contracts  
27 involving electronic communications, including provisions  
28 (relating to the internet in particular) for the following —

- 29 (a) an unaddressed proposal to form a contract is to be  
30 regarded as an invitation to make offers, rather than as  
31 an offer that if accepted would result in a contract;

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- 1 (b) a contract formed automatically is not invalid, void or  
2 unenforceable because there was no human review or  
3 intervention;
- 4 (c) a portion of an electronic communication containing an  
5 input error can be withdrawn in certain circumstances;
- 6 (d) the application of certain provisions of Part 2 to the  
7 extent they do not apply of their own force.

8 **5. Terms used and status of notes**

- 9 (1) In this Act —
- 10 **addressee** of an electronic communication means a person who  
11 is intended by the originator to receive the electronic  
12 communication, but does not include a person acting as an  
13 intermediary with respect to the electronic communication;
- 14 **automated message system** means a computer program or an  
15 electronic or other automated means used to initiate an action or  
16 respond to data messages in whole or in part, without review or  
17 intervention by a natural person each time an action is initiated  
18 or a response is generated by the system;
- 19 **consent** includes consent that can reasonably be inferred from  
20 the conduct of the person concerned, but does not include  
21 consent given subject to conditions unless the conditions are  
22 complied with;
- 23 **data** includes the whole or part of a computer program within  
24 the meaning of the *Copyright Act 1968* (Commonwealth);
- 25 **data storage device** means any article or material (for example,  
26 a disk) from which information is capable of being reproduced,  
27 with or without the aid of any other article or device;
- 28 **electronic communication** means —
- 29 (a) a communication of information in the form of data, text  
30 or images by means of guided or unguided  
31 electromagnetic energy, or both; or
- 32 (b) a communication of information in the form of sound by  
33 means of guided or unguided electromagnetic energy, or

- 1 both, where the sound is processed at its destination by  
2 an automated voice recognition system;
- 3 **information** means information in the form of data, text, images  
4 or sound;
- 5 **information system** means a system for generating, sending,  
6 receiving, storing or otherwise processing electronic  
7 communications;
- 8 **information technology requirements** includes software  
9 requirements;
- 10 **law of this jurisdiction** means any law in force in this  
11 jurisdiction, whether written or unwritten, but does not include a  
12 law of the Commonwealth;
- 13 **non-profit body** means a body that is not carried on for the  
14 purposes of profit or gain to its individual members and is, by  
15 the terms of the body's constitution, prohibited from making  
16 any distribution, whether in money, property or otherwise, to its  
17 members;
- 18 **originator** of an electronic communication means a person by  
19 whom, or on whose behalf, the electronic communication has  
20 been sent or generated before storage, if any, but does not  
21 include a person acting as an intermediary with respect to the  
22 electronic communication;
- 23 **performance** of a contract includes non-performance of the  
24 contract;
- 25 **place of business** means —
- 26 (a) in relation to a person, other than an entity referred to in  
27 paragraph (b), a place where the person maintains a  
28 non-transitory establishment to pursue an economic  
29 activity other than the temporary provision of goods or  
30 services out of a specific location; or
- 31 (b) in relation to a government, an authority of a  
32 government or a non-profit body, a place where any  
33 operations or activities are carried out by that  
34 government, authority or body;

- 1            ***this jurisdiction*** means Western Australia;
- 2            ***transaction*** includes —
- 3            (a) any transaction in the nature of a contract, agreement or
- 4            other arrangement; and
- 5            (b) any statement, declaration, demand, notice or request,
- 6            including an offer and the acceptance of an offer, that
- 7            the parties are required to make or choose to make in
- 8            connection with the formation or performance of a
- 9            contract, agreement or other arrangement; and
- 10           (c) any transaction of a non-commercial nature.
- 11           (2) Notes in this Act are provided to assist understanding and do not
- 12           form part of the Act.
- 13           **6. Crown to be bound**
- 14           This Act binds the Crown in right of Western Australia and, in
- 15           so far as the legislative power of Parliament permits, the Crown
- 16           in all its other capacities.
- 17           **7. Exemptions**
- 18           (1) The regulations may provide that all or specified provisions of
- 19           this Act do not apply —
- 20           (a) to transactions, requirements, permissions, electronic
- 21           communications or other matters specified, or of classes
- 22           specified, in the regulations for the purposes of this
- 23           section; or
- 24           (b) in circumstances specified, or of classes specified, in the
- 25           regulations for the purposes of this section.
- 26           (2) The regulations may provide that all or specified provisions of
- 27           this Act do not apply to specified laws of this jurisdiction.



1                   **Part 2 — Application of legal requirements and**  
2                   **authorisations to electronic communications**

3                   **Division 1 — General rule about validity of transactions for the**  
4                   **purposes of laws of this jurisdiction**

5                   **8.           Validity of electronic transactions**

6                   (1) For the purposes of a law of this jurisdiction, a transaction is not  
7                   invalid because it took place wholly or partly by means of one  
8                   or more electronic communications.

9                   (2) The general rule in subsection (1) does not apply in relation to  
10                  the validity of a transaction to the extent to which another, more  
11                  specific, provision of this Part deals with the validity of the  
12                  transaction.

13                  **Division 2 — Things done under laws of this jurisdiction**

14                  **9.           Writing**

15                  (1) If, under a law of this jurisdiction, a person is required to give  
16                  information in writing, that requirement is taken to have been  
17                  met if the person gives the information by means of an  
18                  electronic communication, where —

19                       (a) at the time the information was given, it was reasonable  
20                       to expect that the information would be readily  
21                       accessible so as to be useable for subsequent reference;  
22                       and

23                       (b) the person to whom the information is required to be  
24                       given consents to the information being given by means  
25                       of an electronic communication.

26                  (2) If, under a law of this jurisdiction, a person is permitted to give  
27                  information in writing, the person may give the information by  
28                  means of an electronic communication, where —

29                       (a) at the time the information was given, it was reasonable  
30                       to expect that the information would be readily

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**Division 2** Things done under laws of this jurisdiction

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- 1 accessible so as to be useable for subsequent reference;  
2 and
- 3 (b) the person to whom the information is permitted to be  
4 given consents to the information being given by means  
5 of an electronic communication.
- 6 (3) This section does not affect the operation of any other law of  
7 this jurisdiction that makes provision for or in relation to  
8 requiring or permitting information to be given, in accordance  
9 with particular information technology requirements —
- 10 (a) on a particular kind of data storage device; or  
11 (b) by means of a particular kind of electronic  
12 communication.
- 13 (4) This section applies to a requirement or permission to give  
14 information, whether the expression *give*, *send* or *serve*, or any  
15 other expression, is used.
- 16 (5) For the purposes of this section, *giving information* includes,  
17 but is not limited to, the following —
- 18 (a) making an application;  
19 (b) making or lodging a claim;  
20 (c) giving, sending or serving a notification;  
21 (d) lodging a return;  
22 (e) making a request;  
23 (f) making a declaration;  
24 (g) lodging or issuing a certificate;  
25 (h) making, varying or cancelling an election;  
26 (i) lodging an objection;  
27 (j) giving a statement of reasons.

1   **10.   Signatures**

- 2       (1) If, under a law of this jurisdiction, the signature of a person is  
3       required, that requirement is taken to have been met in relation  
4       to an electronic communication if —
- 5           (a) a method is used to identify the person and to indicate  
6           the person’s intention in respect of the information  
7           communicated; and
- 8           (b) the method used was either —
- 9               (i) as reliable as appropriate for the purpose for  
10              which the electronic communication was  
11              generated or communicated, in the light of all the  
12              circumstances, including any relevant agreement;  
13              or
- 14              (ii) proven in fact to have fulfilled the functions  
15              described in paragraph (a), by itself or together  
16              with further evidence;
- 17           and
- 18           (c) the person to whom the signature is required to be given  
19           consents to that requirement being met by the use of the  
20           method mentioned in paragraph (a).
- 21       (2) This section does not affect the operation of any other law of  
22       this jurisdiction that makes provision for or in relation to  
23       requiring —
- 24           (a) an electronic communication to contain an electronic  
25           signature (however described); or
- 26           (b) an electronic communication to contain a unique  
27           identification in an electronic form; or
- 28           (c) a particular method to be used in relation to an  
29           electronic communication to identify the originator of  
30           the communication and to indicate the originator’s  
31           intention in respect of the information communicated.

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**Division 2** Things done under laws of this jurisdiction

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1 (3) The reference in subsection (1) to a law that requires a signature  
2 includes a reference to a law that provides consequences for the  
3 absence of a signature.

4 **11. Production of document**

5 (1) If, under a law of this jurisdiction, a person is required to  
6 produce a document that is in the form of paper, an article or  
7 other material, that requirement is taken to have been met if the  
8 person produces, by means of an electronic communication, an  
9 electronic form of the document, where —

10 (a) having regard to all the relevant circumstances at the  
11 time the communication was sent, the method of  
12 generating the electronic form of the document provided  
13 a reliable means of assuring the maintenance of the  
14 integrity of the information contained in the document;  
15 and

16 (b) at the time the communication was sent, it was  
17 reasonable to expect that the information contained in  
18 the electronic form of the document would be readily  
19 accessible so as to be useable for subsequent reference;  
20 and

21 (c) the person to whom the document is required to be  
22 produced consents to the production, by means of an  
23 electronic communication, of an electronic form of the  
24 document.

25 (2) If, under a law of this jurisdiction, a person is permitted to  
26 produce a document that is in the form of paper, an article or  
27 other material, then, instead of producing the document in that  
28 form, the person may produce, by means of an electronic  
29 communication, an electronic form of the document, where —

30 (a) having regard to all the relevant circumstances at the  
31 time the communication was sent, the method of  
32 generating the electronic form of the document provided  
33 a reliable means of assuring the maintenance of the

- 1 integrity of the information contained in the document;  
2 and
- 3 (b) at the time the communication was sent, it was  
4 reasonable to expect that the information contained in  
5 the electronic form of the document would be readily  
6 accessible so as to be useable for subsequent reference;  
7 and
- 8 (c) the person to whom the document is permitted to be  
9 produced consents to the production, by means of an  
10 electronic communication, of an electronic form of the  
11 document.
- 12 (3) For the purposes of this section, the integrity of information  
13 contained in a document is maintained if, and only if, the  
14 information has remained complete and unaltered, apart from —
- 15 (a) the addition of any endorsement; or  
16 (b) any immaterial change,
- 17 which arises in the normal course of communication, storage or  
18 display.
- 19 (4) This section does not affect the operation of any other law of  
20 this jurisdiction that makes provision for or in relation to  
21 requiring or permitting electronic forms of documents to be  
22 produced, in accordance with particular information technology  
23 requirements —
- 24 (a) on a particular kind of data storage device; or  
25 (b) by means of a particular kind of electronic  
26 communication.

27 **12. Retention of information and documents**

- 28 (1) If, under a law of this jurisdiction, a person is required to record  
29 information in writing, that requirement is taken to have been  
30 met if the person records the information in electronic form,  
31 where —
- 32 (a) at the time of the recording of the information, it was  
33 reasonable to expect that the information would be

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- 1 readily accessible so as to be useable for subsequent  
2 reference; and
- 3 (b) if the regulations require that the information be  
4 recorded on a particular kind of data storage device, that  
5 requirement has been met.
- 6 (2) If, under a law of this jurisdiction, a person is required to retain,  
7 for a particular period, a document that is in the form of paper,  
8 an article or other material, that requirement is taken to have  
9 been met if the person retains, or causes another person to  
10 retain, an electronic form of the document throughout that  
11 period, where —
- 12 (a) having regard to all the relevant circumstances at the  
13 time of the generation of the electronic form of the  
14 document, the method of generating the electronic form  
15 of the document provided a reliable means of assuring  
16 the maintenance of the integrity of the information  
17 contained in the document; and
- 18 (b) at the time of the generation of the electronic form of the  
19 document, it was reasonable to expect that the  
20 information contained in the electronic form of the  
21 document would be readily accessible so as to be  
22 useable for subsequent reference; and
- 23 (c) if the regulations require that the electronic form of the  
24 document be retained on a particular kind of data  
25 storage device, that requirement has been met  
26 throughout that period.
- 27 (3) For the purposes of subsection (2), the integrity of information  
28 contained in a document is maintained if, and only if, the  
29 information has remained complete and unaltered, apart from —
- 30 (a) the addition of any endorsement; or  
31 (b) any immaterial change,
- 32 which arises in the normal course of communication, storage or  
33 display.

- 1 (4) If, under a law of this jurisdiction, a person (the *first person*) is  
2 required to retain, for a particular period, information that was  
3 the subject of an electronic communication, that requirement is  
4 taken to have been met if the first person retains, or causes  
5 another person to retain, in electronic form, the information  
6 throughout that period, where —
- 7 (a) at the time of commencement of the retention of the  
8 information, it was reasonable to expect that the  
9 information would be readily accessible so as to be  
10 useable for subsequent reference; and
- 11 (b) having regard to all the relevant circumstances at the  
12 time of commencement of the retention of the  
13 information, the method of retaining the information in  
14 electronic form provided a reliable means of assuring  
15 the maintenance of the integrity of the information  
16 contained in the electronic communication; and
- 17 (c) throughout that period, the first person also retains, or  
18 causes the other person to retain, in electronic form,  
19 such additional information obtained by the first person  
20 as is sufficient to enable the identification of the  
21 following —
- 22 (i) the origin of the electronic communication;  
23 (ii) the destination of the electronic communication;  
24 (iii) the time when the electronic communication was  
25 sent;  
26 (iv) the time when the electronic communication was  
27 received;
- 28 and
- 29 (d) at the time of commencement of the retention of the  
30 additional information covered by paragraph (c), it was  
31 reasonable to expect that the additional information  
32 would be readily accessible so as to be useable for  
33 subsequent reference; and

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1 (e) if the regulations require that the information be retained  
2 on a particular kind of data storage device, that  
3 requirement has been met throughout that period.

4 (5) For the purposes of subsection (4), the integrity of information  
5 that was the subject of an electronic communication is  
6 maintained if, and only if, the information has remained  
7 complete and unaltered, apart from —

8 (a) the addition of any endorsement; or

9 (b) any immaterial change,

10 which arises in the normal course of communication, storage or  
11 display.

12 **Division 3 — Other provisions relating to laws of**  
13 **this jurisdiction**

14 **13. Time of dispatch**

15 (1) For the purposes of a law of this jurisdiction, unless otherwise  
16 agreed between the originator and the addressee of an electronic  
17 communication, the time of dispatch of the electronic  
18 communication is —

19 (a) the time when the electronic communication leaves an  
20 information system under the control of the originator or  
21 of the party who sent it on behalf of the originator; or

22 (b) if the electronic communication has not left an  
23 information system under the control of the originator or  
24 of the party who sent it on behalf of the originator, the  
25 time when the electronic communication is received by  
26 the addressee.

27 Note: Paragraph (b) would apply to a case where the parties exchange  
28 electronic communications through the same information system.

29 (2) Subsection (1) applies even though the place where the  
30 information system supporting an electronic address is located  
31 may be different from the place where the electronic  
32 communication is taken to have been dispatched under  
33 section 15.



1     **14.     Time of receipt**

2     (1) For the purposes of a law of this jurisdiction, unless otherwise  
3     agreed between the originator and the addressee of an electronic  
4     communication —

5         (a) the time of receipt of the electronic communication is  
6         the time when the electronic communication becomes  
7         capable of being retrieved by the addressee at an  
8         electronic address designated by the addressee; or

9         (b) the time of receipt of the electronic communication at  
10         another electronic address of the addressee is the time  
11         when both —

12             (i) the electronic communication has become  
13             capable of being retrieved by the addressee at  
14             that address; and

15             (ii) the addressee has become aware that the  
16             electronic communication has been sent to that  
17             address.

18     (2) For the purposes of subsection (1), unless otherwise agreed  
19     between the originator and the addressee of the electronic  
20     communication, it is to be assumed that the electronic  
21     communication is capable of being retrieved by the addressee  
22     when it reaches the addressee's electronic address.

23     (3) Subsection (1) applies even though the place where the  
24     information system supporting an electronic address is located  
25     may be different from the place where the electronic  
26     communication is taken to have been received under section 15.

27     **15.     Place of dispatch and place of receipt**

28     (1) For the purposes of a law of this jurisdiction, unless otherwise  
29     agreed between the originator and the addressee of an electronic  
30     communication —

31         (a) the electronic communication is taken to have been  
32         dispatched at the place where the originator has its place  
33         of business; and

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- 1 (b) the electronic communication is taken to have been  
2 received at the place where the addressee has its place of  
3 business.
- 4 (2) For the purposes of the application of subsection (1) to an  
5 electronic communication —
- 6 (a) a party's place of business is assumed to be the location  
7 indicated by that party, unless another party  
8 demonstrates that the party making the indication does  
9 not have a place of business at that location; and
- 10 (b) if a party has not indicated a place of business and has  
11 only one place of business, it is to be assumed that that  
12 place is the party's place of business; and
- 13 (c) if a party has not indicated a place of business and has  
14 more than one place of business, the place of business is  
15 that which has the closest relationship to the underlying  
16 transaction, having regard to the circumstances known  
17 to or contemplated by the parties at any time before or at  
18 the conclusion of the transaction; and
- 19 (d) if a party has not indicated a place of business and has  
20 more than one place of business, but paragraph (c) does  
21 not apply, it is to be assumed that the party's principal  
22 place of business is the party's only place of business;  
23 and
- 24 (e) if a party is a natural person and does not have a place of  
25 business, it is to be assumed that the party's place of  
26 business is the place of the party's habitual residence.
- 27 (3) A location is not a place of business merely because that is —
- 28 (a) where equipment and technology supporting an  
29 information system used by a party are located; or
- 30 (b) where the information system may be accessed by other  
31 parties.
- 32 (4) The sole fact that a party makes use of a domain name or  
33 electronic mail address connected to a specific country does not

1 create a presumption that its place of business is located in that  
2 country.

3 **16. Attribution of electronic communications**

4 (1) For the purposes of a law of this jurisdiction, unless otherwise  
5 agreed between the purported originator and the addressee of an  
6 electronic communication, the purported originator of the  
7 electronic communication is bound by that communication only  
8 if the communication was sent by the purported originator or  
9 with the authority of the purported originator.

10 (2) Subsection (1) does not affect the operation of a law of this  
11 jurisdiction that makes provision for —

12 (a) conduct engaged in by a person within the scope of the  
13 person's actual or apparent authority to be attributed to  
14 another person; or

15 (b) a person to be bound by conduct engaged in by another  
16 person within the scope of the other person's actual or  
17 apparent authority.

1 **Part 3 — Additional provisions applying to contracts**  
2 **involving electronic communications**

3 **17. Application and operation of this Part**

4 This Part applies to the use of electronic communications in  
5 connection with the formation or performance of a contract  
6 between parties where the proper law of the contract is (or  
7 would on its formation be) the law of this jurisdiction, and so  
8 applies —

- 9 (a) whether some or all of the parties are located within  
10 Australia or elsewhere; and  
11 (b) whether the contract is for business purposes, for  
12 personal, family or household purposes, or for other  
13 purposes.

14 **18. Invitation to treat regarding contracts**

15 (1) A proposal to form a contract made through one or more  
16 electronic communications that —

- 17 (a) is not addressed to one or more specific parties; and  
18 (b) is generally accessible to parties making use of  
19 information systems,

20 is to be considered as an invitation to make offers, unless it  
21 clearly indicates the intention of the party making the proposal  
22 to be bound in case of acceptance.

23 (2) Subsection (1) extends to proposals that make use of interactive  
24 applications for the placement of orders through information  
25 systems.

26 **19. Use of automated message systems for contract formation —**  
27 **non-intervention of natural person**

28 A contract formed by —

- 29 (a) the interaction of an automated message system and a  
30 natural person; or

1           (b) the interaction of automated message systems,  
2           is not invalid, void or unenforceable on the sole ground that no  
3           natural person reviewed or intervened in each of the individual  
4           actions carried out by the automated message systems or the  
5           resulting contract.

6   **20. Error in electronic communications regarding contracts**

7       (1) This section applies in relation to a statement, declaration,  
8       demand, notice or request, including an offer and the acceptance  
9       of an offer, that the parties are required to make or choose to  
10      make in connection with the formation or performance of a  
11      contract.

12     (2) If—

13       (a) a natural person makes an input error in an electronic  
14       communication exchanged with the automated message  
15       system of another party; and

16       (b) the automated message system does not provide the  
17       person with an opportunity to correct the error,

18       the person, or the party on whose behalf the person was acting,  
19       has the right to withdraw the portion of the electronic  
20       communication in which the input error was made if—

21       (c) the person, or the party on whose behalf the person was  
22       acting, notifies the other party of the error as soon as  
23       possible after having learned of the error and indicates  
24       that he or she made an error in the electronic  
25       communication; and

26       (d) the person, or the party on whose behalf the person was  
27       acting, has not used or received any material benefit or  
28       value from the goods or services, if any, received from  
29       the other party.

30     (3) The right of withdrawal of a portion of an electronic  
31     communication under this section is not of itself a right to  
32     rescind or otherwise terminate a contract.

**s. 21**

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1 (4) The consequences (if any) of the exercise of the right of  
2 withdrawal of a portion of an electronic communication under  
3 this section are to be determined in accordance with any  
4 applicable rule of law.

5 Note: In some circumstances the withdrawal of a portion of an electronic  
6 communication may invalidate the entire communication or render it  
7 ineffective for the purposes of contract formation (see paragraph 241  
8 of the UNCITRAL explanatory note for the United Nations Convention  
9 on the Use of Electronic Communications in International Contracts).

10 **21. Application of Act in relation to contracts**

11 (1) Subject to subsection (2), the provisions of sections 8 and 13  
12 to 15 apply to —

- 13 (a) a transaction constituted by or relating to a contract; or  
14 (b) an electronic communication relating to the formation or  
15 performance of a contract,

16 in the same way as they apply to a transaction or electronic  
17 communication referred to in those sections, and so apply as if  
18 the words “For the purposes of a law of this jurisdiction” were  
19 omitted.

20 (2) However, this Part (including subsection (1)) does not apply to  
21 or in relation to a contract to the extent that —

- 22 (a) Part 2 would of its own force have the same effect as  
23 this Part if this Part applied; or  
24 (b) a law of another State or Territory (that is in  
25 substantially the same terms as Part 2) would of its own  
26 force have the same effect as this Part if this Part  
27 applied.

28 Note: This section applies provisions of Part 2 to contracts or proposed  
29 contracts to the extent (if any) that those provisions do not apply  
30 merely because they are expressed to apply in relation to a law of this  
31 jurisdiction. This section also disapplies the provisions of Part 3 to the  
32 extent that Part 2 would apply of its own force. An example where  
33 Part 2 may not apply of its own force is where a contract is being  
34 negotiated in a State or Territory from a supplier located overseas.

1 **Part 4 — Miscellaneous**

2 **22. Regulations**

3 The Governor may make regulations prescribing all matters that  
4 are required or permitted by this Act to be prescribed, or are  
5 necessary or convenient to be prescribed for giving effect to the  
6 purposes of this Act.

7 **23. Transitional provisions**

8 (1) Subject to subsection (2) —

9 (a) section 18 extends to proposals made before the  
10 commencement day; and

11 (b) section 19 extends to actions carried out before the  
12 commencement day; and

13 (c) section 20 extends to statements, declarations, demands,  
14 notices or requests, including offers and the acceptance  
15 of offers, made or given before the commencement day.

16 (2) Subsection (1) and Part 3 do not apply in relation to contracts  
17 formed before the commencement day.

18 (3) In subsections (1) and (2) —

19 *commencement day* means the day of commencement of Part 3.

20 **24. *Electronic Transactions Act 2003* repealed**

21 The *Electronic Transactions Act 2003* is repealed.

22 **25. Acts amended**

23 (1) This section amends the Acts listed in the Table.

24 (2) Amend the provisions listed in the Table as set out in the Table.

1

**Table**

<b>Provision</b>	<b>Delete</b>	<b>Insert</b>
<b>1. Bail Act 1982</b>		
s. 3(1) def. of <b>electronic communication</b>	<i>Electronic Transactions Act 2003</i> section 5	<i>Electronic Transactions Act 2011</i> section 5(1)
s. 3A(2)	<i>Electronic Transactions Act 2003</i> section 5	<i>Electronic Transactions Act 2011</i> section 5(1)
<b>2. The Criminal Code</b>		
s. 204B(1) def. of <b>electronic communication</b>	section 5 of the <i>Electronic Transactions Act 2003</i>	the <i>Electronic Transactions Act 2011</i> section 5(1)
<b>3. Legal Profession Act 2008</b>		
s. 290(6)(d)	<i>Electronic Transactions Act 2003</i> section 9	<i>Electronic Transactions Act 2011</i> section 10

2    **26. The Criminal Code amended**

- 3    (1) This section amends *The Criminal Code* (as amended by the  
4    *Criminal Code Amendment (Identity Crime) Act 2010*  
5    section 5).



1 (2) In section 489 in the definition of *electronic communication*  
2 delete “*Electronic Transactions Act 2003* section 5;” and insert:

3

4 *Electronic Transactions Act 2011* section 5(1);

5

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Defined Terms

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**Defined Terms**

*[This is a list of terms defined and the provisions where they are defined.*

*The list is not part of the law.]*

<b>Defined Term</b>	<b>Provision(s)</b>
addressee .....	5(1)
automated message system .....	5(1)
commencement day .....	23(3)
consent .....	5(1)
data .....	5(1)
data storage device .....	5(1)
electronic communication .....	5(1)
first person .....	12(4)
give .....	9(4)
giving information .....	9(5)
information .....	5(1)
information system .....	5(1)
information technology requirements .....	5(1)
law of this jurisdiction .....	5(1)
non-profit body .....	5(1)
originator .....	5(1)
performance .....	5(1)
place of business .....	5(1)
section 5 .....	2
send .....	9(4)
serve .....	9(4)
this jurisdiction .....	5(1)
transaction .....	5(1)