

Module	ELECTRONIC TRANSACTIONS
Jurisdictions	CTH, NSW, VIC, SA, TAS, WA, NT, QLD, ACT

Module Scope

Is your organisation permitted substitute electronic processes for paper-based processes when meeting legislated obligations?

How can your organisation offer enforceable contracts to the public on its website? What happens when someone agrees to an electronic contract offer by accident?

Which of your reporting and record keeping requirements cannot be performed electronically?

When does your obligation require electronic communications consent? How is that consent provided? What happens when consent is withdrawn?

When exactly does an electronic transaction occur for compliance purposes? Where does an electronic communication originate and arrive?

Module Application

Commonwealth, state and territory legislation frequently creates information management and record keeping obligations. Many of these laws were written in a time before digitisation made the creation, retention and handling of physical documents largely obsolete.

Electronic transactions legislation in every Australian jurisdiction empowers individuals, organisations and government agencies to meet their information management and record keeping obligations electronically as an alternative to managing physical documents. The legislation applies the same powers to the creation and performance of contracts.

Electronic transaction legislation encompasses:

- › Electronic Transactions Act 1999 (Commonwealth)
- › Electronic Transactions Act 2001 (ACT)
- › Electronic Transactions Act 2000 (NSW)
- › Electronic Transactions (Northern Territory) Act 2000 (NT)
- › Electronic Transactions (Queensland) Act 2001 (Qld)
- › Electronic Communications Act 2000 (SA)
- › Electronic Transactions Act 2000 (Tas)
- › Electronic Transactions (Victoria) Act 2000 (Vic)
- › Electronic Transactions Act 2011 (WA)

The Electronic Transactions Act of each state and territory mirrors the Commonwealth law. Minor variations appear in the legislation of each jurisdiction. These variations address issues of consent and create unique exemptions.

This module breaks down electronic transactions legislation into its component parts. It illustrates the circumstances that allow organisations to meet their obligations using an electronic method as an alternative to the method stated in the text of the legislation. It explains the obligations of organisations that choose to keep records, communicate and create contracts electronically.

The module breaks electronic transactions legislation into the core obligations below.

1. Meeting Requirements by Electronic Means

The organisation must only meet an obligation to deliver written information, sign a document or produce a document using an electronic solution with the consent of the recipient.

Consent may be explicit or inferred. The organisation may assume conferred consent from the behaviour of the recipient. The organisation must fulfil its obligations using physical documents whenever consent to conduct a transaction by electronic means is absent or withdrawn.

Organisations required by legislation to record information in writing may choose to meet this obligation by recording the information in an electronic format. The organisation must store electronic records in a format that is secure and accessible.

2. Electronic Communications

Electronic communications are any electronic transmission of information in the form of data, text or images.

Legislation and the provisions of contracts may create time-sensitive and geographically-sensitive communication obligations for organisations. Organisations may choose to perform these communications electronically.

The organisation may enter into an agreement with another party that establishes how both parties will calculate the time and place of the dispatch and receipt of electronic communications for compliance purposes. In the absence of an agreement, the organisation must calculate the time and place of dispatch and receipt in the prescribed manner.

3. Exchange of Contract by Electronic Means

The organisation may use electronic communications to form a contract with any party in any location around the world provided the law that governs that contract will be the law of an Australian state or territory.

Special rules apply to electronic contract proposals made to the public online. The organisation must specify in the text of the electronic communication containing a contract proposal that agreeing to the proposal will form an enforceable contract.

If an individual makes an input error while communicating a statement, declaration, demand, notice, request, contract offer or contract acceptance during the formation or performance of a contract, the organisation must allow the individual to withdraw the portion of the communication containing the error.

4. Exemptions from Electronic Transactions

Exemptions to electronic transactions laws apply to certain transactions. The nature and extent of these exemptions vary in each jurisdiction.

Exempt transactions are excluded from the powers granted by electronic transactions legislation. Organisations must perform exempt transactions using the method indicated by the original legislation. Usually this involves creating and managing physical documents.

Each organisation must understand the exemptions that apply to electronic transactions laws in the jurisdictions where the organisation operates. Notably, the Corporations Act 2001 (Cth) is exempt in its entirety from all electronic transactions legislation.

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