

27 March 2023

Modernising Document Execution Section
Attorney-General's Department
4 National Circuit
BARTON ACT 2600

By email: eta@ag.gov.au

Dear Sir / Madam,

Attorney-General's Department consultation on the Electronic Transactions Act

1. This submission has been prepared on behalf of the Digital Commerce Committee of the Business Law Section of the Law Council of Australia (the **Committee**) in response to the consultation in relation to the *Electronic Transactions Act 1999* (Cth) (the **Act**).
2. The Committee thanks the Attorney-General's Department for the opportunity to comment on the Act.
3. The Committee seeks only to comment on subject matter in which Committee members have expertise and wish to comment.

Summary of position and recommendations

4. The Committee recommends:
 - (a) flexible legislation that can accommodate the inevitable and dynamic technological advances that will influence digital commerce in the future;
 - (b) national harmonisation of laws and regulations relating to electronic transactions—the Committee's view is that this would occur preferably with a Commonwealth Act and regulations to cover the field rather than persevering with now multiple divergent variants among States and Territories. The Law Council notes that it has not consulted its constituent bodies more broadly regarding this view and would need to do so in order to reach a settled whole-of-Law-Council view on the merits of harmonisation versus a Commonwealth Act covering the field to effectively clear away those multiple divergent variants;
 - (c) removing the consent requirement as a condition of validity in a business-to-business commercial transaction context and dealing with any legitimate concerns by more focussed policy implementation, and aligning to the requirements for government agencies—they must accept electronic communications and signatures, but they may (reasonably) specify the types of electronic communications and signatures they will accept;

- (d) new rules be provided clarifying the time of dispatch and receipt of electronic communications—rules that reflect the technological reality of digital commerce and are sufficiently technology neutral to accommodate further technological developments as well as third party hosted email such as Gmail and Outlook mail;
 - (e) that a simple *functional* definition of signature be provided to avoid uncertainty and provide for consistency;
 - (f) removal of definitions of validity phrased in the double negative ('is not invalid if ...') and instead frame them as inclusive, positive definitions;
 - (g) amendments to provide that the regulations may deem specified types of signature methods such as Nitro Sign, Adobe Sign and DocuSign to be appropriately reliable for specified purposes;
 - (h) a facilitative provision permitting remote witnessing/attestation etc by a person who witnesses the first person electronically signing an electronic document by an audio-visual system (e.g., the screen-share functionality within Zoom or Teams) and who then signs a copy of those electronic documents themselves;
 - (i) a regulation-making power to specify particular types of witnessing systems that are deemed to be appropriately reliable for specified purposes;
 - (j) in respect of record-keeping, where the context in which the signature was made, and the intent of the signatory are effectively captured and 'packaged' with the bare signature there ought to be presumptive validity accorded; and
 - (k) to address treatment of deeds, adoption of the NSW (Conveyancing Act) provision.
5. The Committee acknowledges that, although the law can often see through the 'illusion of novelty' in the application of emerging technologies, the pace of changing adoption and the patterns of human interaction in digital commerce will evolve in tandem with adoption of new ways of interacting. The law must serve an enabling role in digital commerce and not create a source of friction or uncertainty. In particular, increasing use of automation, software protocols, autonomous systems and artificial intelligence will need to be considered by our laws in the coming years. Any amendments to legislation considered today must have full sight of the direction of travel for an increased dependency on technology in human interactions and commerce.

Background and general comments

6. The Act (and its State and Territory variants) was intended to remove legal obstacles to electronic transactions by overcoming some existing common law form requirements for writing and signatures and rules of evidence. Those form requirements might exclude or discriminate against electronic records or electronic authentication of records. The **Acts** overcome this by providing that electronic records satisfy form and evidence requirements for writing and that the electronic authentication of records satisfies form and evidence requirements for signature. The Acts aim to be technology neutral: that is, they do not seek to advantage or

disadvantage any particular technology for electronic records or electronic authentication of records.¹

7. The Electronic Commerce Expert Group Report of 31 March 1998 adopted Professor Lon Fuller's description of five policy objectives which can underpin a statutory regime for signature and other form requirements.² Sneddon has elaborated on these in the context of the Electronic Transactions legislation:³

(i) Evidentiary function

Formalities such as signatures serve an evidentiary purpose by ensuring the availability of admissible and reliable evidence. This helps to prevent perjury.⁴ Requirements for writing also perform evidentiary functions including the provision of a durable record of information (including the terms of an agreement) and discouraging reliance on oral statements or agreements which are not permanently recorded, and which can more easily be disputed and more costly to prove in the event of a dispute.

(ii) Cautionary/protective function

Signature requirements have a protective effect by cautioning the signatory. A signature requirement encourages deliberation and reflection before action.⁵ The need for a signature can warn the signatory that the document has legal consequences and encourage them to think about whether they really want to be legally bound. This function can be particularly important in protecting consumers. For example, a buyer's signature to waive cooling off rights when buying a second-hand motor car. Some of the exceptions to the Act are based on this function. For example, the Act exempts the requirements in the National Consumer Credit Protection Regulations 2010, sub-regulations 87(a) and 87(c) that a request by a credit provider to the occupier for entry to the premises must be made by the credit provider or agent by application in writing and that the

¹ See Sneddon, M. "Legislating to Facilitate Electronic Signatures and Records: Exceptions, Standards and the Impact of the Statute Book" (1998) 21(2) UNSW Law Journal 334 available at <http://classic.austlii.edu.au/au/journals/UNSWLawJl/1998/59.html>

² Expert Group Report p48 and Fuller, "Consideration and Form" (1941) 41 Columbia Law Review 799, 800-801

³ Sneddon, M. "Legislating to Facilitate Electronic Signatures and Records: Exceptions, Standards and the Impact of the Statute Book" (1998) 21(2) UNSW Law Journal 334

⁴ In particular, signatures can perform the following evidentiary functions:

- identify the signer by name;
- primarily identify a particular characteristic or attribute or status of the signer, rather than the person's name (for example solicitor, Secretary of a Department, company director);
- provide evidence that the signatory has agreed to be bound by the record by adopting or approving it;
- provide evidence that the signatory has acknowledged or verified or witnessed the record, but not necessarily agreed to be bound by its contents;
- provide evidence of the authenticity and voluntariness of another signature (witnessing);
- provide evidence that the record is the original;
- provide evidence of the date, time or place of the signatory's signing;
- provide prima facie evidence of the content of the record (such as averment provisions);
- provide prima facie evidence that the record is a true copy of another record;
- provide evidence that the document is complete and final; and
- provide evidence that the document's information content has not be altered subsequent to the signature.

⁵ C Douglas Miller, "Will Formality, Judicial Formalism, and Legislative Reform: An Examination of the New Uniform Probate Code 'Harmless Error' Rule and the Movement towards Amorphism" (1991) 43 Florida Law Review 167 at 261.

occupier's consent must be in writing in accordance with Form 13 and signed by the occupier. These requirements provide an evidentiary trail and caution the occupier about the seriousness of the action being requested and authorised—more so than a blanket consent in advance to any electronic request and more so than tapping an “I agree—continue” button on an app on a phone.

(iii) Reliance function

Signatures may also serve a protective function for people who receive or rely on a document by providing some evidence that the maker of the document had given his or her full attention to the document and, according to the context, authored, adopted, or verified its information content.

(iv) Channelling function

Formalities such as signatures can serve a channelling function by clarifying the line between intent to act in a legally significant way and intent to act otherwise.⁶ “Parties are forced to use a particular form, and similar agreements are given a similar form.” In this sense it is clearly related to the evidentiary function. Signatures indicate that the signatory intended the document to have legal status and effect according to its terms and to be bound by the document.

(v) Record-keeping function

Formalities such as signatures and requirements for writing on paper also create a durable record of the parties and the terms of arrangements. This facilitates the execution of government regulation, such as licensing laws and taxation, audits for compliance and dispute resolution processes.

8. The Committee considers that these five policy objectives remain relevant today, but that legislation needs to be flexible enough to adapt to changing use of technology in business and commerce as proposed through this submission.

Exemptions and Inconsistencies [Consultation Questions 1–6]

National consistency and harmonisation

9. The Committee supports the principle of national consistency and harmonisation for matters relating to commerce and, in particular, laws providing clarity around electronic transactions.

Undue complexity and fragmentation

10. Members of the Committee, Philip Argy and Mark Sneddon, were also members of the Electronic Commerce Expert Group that advised the Hon. Daryl Williams, Attorney-General at the time in 1998, on the bill. The recommendation at the time was that there should be a single Commonwealth Act to facilitate electronic commerce, by which all other laws—federal, State and Territory—would be interpreted. A single federal law would promote national consistency and harmonisation of electronic commerce practices across Australia, rather than risk inconsistency and confusion among non-uniform federal, State and Territory laws

⁶ C Douglas Miller, note 5 supra at 259-60

(which has occurred—see below). A single federal law should be based on all available federal powers including the postal, telegraphic, telephonic and like services power in subsection 51(v) of the Constitution, and the external affairs power in subsection 51(xxix) given Australia’s adoption of the UNCITRAL Model Law.

11. Contrary to this recommendation, the Attorney-General opted to enact a federal law to be used as a model law, which allowed each State and Territory to enact their own statutory regime. While State and Territory legislation largely followed the model initially, variants have been introduced over time, especially at the subsidiary level of regulations, which has resulted in undue complexity and fragmentation across the following nine relevant Acts governing electronic transactions/communications (“**Acts**”) and their corresponding regulations (if applicable) (“**Regulations**”):

- *Electronic Transactions Act 1999* (Cth) (“**Cth Act**”)
- *Electronic Transactions Regulations 2020* (Cth) (“**Cth Regulations**”)
- *Electronic Transactions Act 2000* (NSW) (“**NSW Act**”)
- *Electronic Transactions Regulation 2017* (NSW) (“**NSW Regulations**”)
- *Electronic Transactions (Victoria) Act 2000* (Vic) (“**Vic Act**”)
- *Electronic Transactions (Victoria) Regulations 2020* (Vic) (“**Vic Regulations**”)
- *Electronic Communications Act 2000* (SA) (“**SA Act**”)
- *Electronic Communications Regulations 2017* (SA) (“**SA Regulations**”)
- *Electronic Transactions Act 2011* (WA) (“**WA Act**”)
- *Electronic Transactions Regulations 2012* (WA) (“**WA Regulations**”)
- *Electronic Transactions (Queensland) Act 2001* (“Qld”) (“**Qld Act**”)
- *Electronic Transactions Act 2000* (Tas) (“**Tas Act**”)
- *Electronic Transactions Regulations 2021* (Tas) (“**Tas Regulations**”)
- *Electronic Transactions (Northern Territory) Act 2000* (NT) (“**NT Act**”)
- *Electronic Transactions (Northern Territory) Regulations 2001* (NT) (“**NT Regulations**”)
- *Electronic Transactions Act 2001* (ACT) (“**ACT Act**”)

12. The Committee has provided in **Schedules 1 and 2** examples of the multiplicity of inconsistent and divergent variations and exemptions that now exist across Australia which, in a global trading context, create alarming uncertainty for the enforceability and reliability of electronic commerce. A high-level comparative analysis of jurisdictional exemptions is set out in Schedule 1, with a more comprehensive comparison of exemptions by jurisdiction is tabulated in Schedule 2.

13. In summary:

- (a) Cth Act

The Cth Act provides the most comprehensive exemptions. General exemptions are contained within the Cth Act itself (see section 7B and schedule 1), but schedule 1 to the Cth Regulations lists 91 items—identifying specific provisions of legislative instruments that are exempt from certain provisions of the Cth Act. See **Schedule 3** to this submission.

- (b) NSW Act

The NSW Act differs from the other Acts (except the Vic Act discussed below) in that it has a Part 2B Remote Witnessing, which allows witnessing of certain

documents (e.g., wills, powers of attorney, deeds, affidavits, statutory declarations) to occur by audio-visual link. It appears this came into effect on 28 September 2020 as a “pilot scheme” and remained in effect following the pilot scheme. The same provisions were introduced as special provisions for the COVID-19 pandemic but were subsequently re-enacted in permanent form.

(c) Vic Act

Similar to the position in NSW, subsection 12 of the Vic Act allows witnessing to occur by audio visual link. Further, section 12A provides that deeds may be created, signed, sealed and delivered by electronic communication, and section 12B provides that a mortgage may be in electronic form.

(d) SA Act

The SA Act differs from the other Acts in that it has an additional Part 3—Issue of government documents by approved information system. Part 3 allows the Minister to approve “information systems” for the issuing of government documents by electronic means (for documents that otherwise may only be issued in the form of a physical document).

(e) Qld Act

Unlike the other Acts where the exemptions are included in regulations, the exemptions to the Qld Act are included in schedule 1 to the Act itself. Further, the entire Act is excluded from applying to the transactions listed in schedule 1 (as opposed to specified provisions only).

(f) ACT Act

There are no exemptions from the ACT Act. The ACT Act has the mechanism (as do all the other Acts) to prescribe exemptions in regulations. However, no regulations have been made.

14. In addition to the national fragmentation explained above, temporary legislation that was passed in the early stages of the COVID 19 outbreak has further complicated matters. **Schedule 4** includes the range of COVID 19 related measures introduced.

Relevant provisions scattered under other legislative frameworks

15. Not only have states and territory regimes evolved in divergent ways, but some states also have enacted provisions relevant to electronic transactions under different legislative regimes, further undermining national harmonisation. For example, NSW provisions relating to the execution of deeds are contained in the *Conveyancing Act 1919* (NSW), section 38 (Signature and attestation) rather than in the NSW Act.
16. Furthermore, amendments to the *Corporations Act 2001* (Cth) (such as section 127) now provide for corporate execution of documents without that being reflected in the Acts. These vital practical provisions relating to electronic transactions between corporate parties are now housed outside of the very piece of legislation where one would expect to find them.
17. As a matter of policy, the Committee supports the principle of international harmonisation where appropriate. Australia as a favourable jurisdiction for international trade should also consider international harmonisation with other

jurisdictions. **Schedule 5** provides details of other jurisdictions that have adopted the UNCITRAL Model Law on Electronic Commerce, which may be informative when considering law reform.

18. The Committee recommends that all provisions relevant to electronic transactions be codified and consolidated into a single Commonwealth Act that provides a single source of authority for how and where electronic transactions are enabled, validated, executed and dealt with. This comprehensive statute would remove a significant amount of complexity and friction from electronic and digital commerce.

Consent Requirements [Consultation Questions 1–13]

19. The provisions in the Acts requiring the consent of a recipient of an electronic communication or an electronic signature appear to be based on three aspects of the UNCITRAL Model Law on Electronic Commerce of 1996 and the recommendations of the Expert Group Report of 31 March 1998:

- (a) First, the Model Law provides that parties may vary or contract out of its facilitative provisions. The Expert Group recommended that, to ensure that a stronger party to a contract did not impose unreasonable electronic communication or signature use or standards on weaker parties in a contractual variation, a party could avoid the effect of the variation by showing that it is not fair or reasonable for the other party to rely on that term of the contract (like the Australian Consumer law rule that a supplier cannot limit its liability for breach of a consumer guarantee where it is not fair or reasonable to do so). Instead of this rule, the Acts apply the stronger rule that parties must positively consent to the use of electronic communications and signatures, and government agencies may specify standards that govern electronic communications and signatures they will receive and rely on.
- (b) Secondly, the Model Law was intended to apply to commercial transactions and not override any rule of law for the protection of consumers. The Expert Group recommended that specific exceptions be considered for some consumer transactions (and also other instruments where it was not apparent how the functionality of paper transactions could be replicated electronically: e.g. witnessing of another person's electronic signature; requirements for negotiable instruments where the original paper was endorsed; and transfer of possession of the endorsed paper transferred title to goods or a chose in action). While some of the Acts specifically exempt some consumer transactions, others appear to have adopted a broader approach of using the consent requirement to let consumers decide whether they wish to receive, rely on and use electronic communications and signatures.

Although the consent requirement provides some protection for people who are not technology literate or easily confused by technology (including some older Australians and those with a disability) and those who do not have ready access to electronic communications, in practice standard form contracts are used to give the business and government counterparties the benefit of a standing consent. In the Committee's view, vulnerable cohorts should not be coerced into using and relying on electronic communications which may wrongly assume they have access to and are monitoring electronic addresses or apps and have software that can verify electronic signatures.

At a practical level many institutions refuse consent and demand wet signatures on paper at enormous inconvenience and cost to consumers, whilst giving themselves the ability to send notices and other documents to consumers through the use of standing consents in their terms and conditions. In the Committee's view this abuse of the consent requirement by businesses and institutions should be addressed by removing it as a condition of validity when businesses and institutions are receiving electronic communications or electronic signatures.

The consent requirement should be retained for individuals who receive electronic signatures, noting that this will mainly have practical effect in individual-to-individual communication contexts as businesses and government will use standard form contracts to procure the consent of individual customers to receive electronic signatures. Government could consider whether there should be a power to make regulations dispensing with the need for individuals' consent in particular circumstances if particular electronic signing technologies are used and the policy maker considers that the use of those technologies in that context will not cause detriment to individuals asked to receive and rely on such electronic signatures. This will require government to consider vulnerable cohorts, consumer protection and evidence sufficiency and fraud risk issues in particular individual-to-individual contexts.

- (c) A surgeon, the executor of a will and a mortgagee may require a higher degree of authentication of the identity and consent of an apparent signer of a permission on which they intend to rely than a council relying on an apparent signature of a resident applying for a hard waste collection. Reliers who rely on signatures for informed consent or contractual consent may reasonably want to specify the type of electronic signature they are prepared to rely on, and not consent to other types.

- 20. The Committee recommends the removal of the consent requirement in a business-to-business commercial transaction context and instead, in that business-to-business context, requiring a relier on an electronic communication or a signature, acting reasonably, to specify by notice in advance the types of electronic communication and electronic signature acceptable to it. If the electronic communication or signature meets that reasonable advance specification, the Act should apply to satisfy the legal requirement for an electronic communication or signature. Effectively, this puts businesses in the same position as government agencies—they must accept electronic communications and signatures, but they may (reasonably) specify the types of electronic communications and signatures they will accept.

Timing of dispatch and receipt of electronic communications

- 21. The Acts, insofar as they address timing of dispatch and receipt of electronic communications, are outdated. The outmoded definitions as to timing of dispatch and receipt of electronic communications rely on a concept of an email being sent at the time the message leaves the information systems under control of the sender. At the time of drafting of the Acts, it was extremely uncommon not to have control over the server or system from which the email was dispatched.
- 22. However, today most of these servers/systems/services are outsourced. These rules do not easily accommodate popular third-party email platforms such as Gmail,

Hotmail and Outlook.com, not to mention social media-based messaging systems that even include platforms designed to prevent a permanent record being kept of messages. Policy attention needs to be directed at facilitating electronic commerce by removing outdated form requirements and deeming mechanisms valid that create an evidentiary record of the elements needed for a valid signature for the functional context. For example, the requirements for a valid digital or electronic signature may differ according to the role of the signature, such as to:

- (a) prove a person's identity;
- (b) signify assent to a legal document;
- (c) witness another person's signature;
- (d) certify a document or photograph;
- (e) provide an autograph;
- (f) signify the sender of a communication.

23. Importantly, it must be borne in mind that it is the act of signing that has legal significance rather than the physical manifestation of that act, which makes it necessary to provide for context and intent evidence to be coupled with the electronic or digital manifestation of the act of signing, be that a visual simulation of a conventional written signature or a set of electronic metadata embodying GPS location, date and time, IP address and the like, which are encoded as a composite package with the 'bare' signature. These evidentiary issues are presently ignored or assumed, leading to significant uncertainty about the enforceability of digitally signed documents with a consequential conservative response being to demand wet signatures on paper until the Acts are amended to prescribe valid modes of capturing the context and intent elements that need to be coupled with the act of signing for a useable evidentiary record sufficient to resist signature repudiation.
24. In fact, the circumstances in which signature repudiation will be permitted could usefully be codified to deal with many of the concerns currently dealt with in more convoluted ways by the variants of the Acts. For an example of this approach see section 12 of the *Electronic Conveyancing National Law* which provides limited repudiation rules for digital signatures, but in the context of the mandated use of PKI digital signatures among a network of parties subject to particular regulatory and contractual obligations concerning digital signing.
25. Outdated definitions result in inconsistency and confusion as to when agreements are conclusively formed and legally binding.
26. Evolving technology is generating uncertainty as to if and how the current statutory provisions apply. For example, the concept of control over servers or systems used to make electronic communications resonates in the statutes.
27. The Committee recommends that these provisions be revisited and that new rules clarifying the operation of the postal acceptance rule for time of dispatch and receipt of electronic communications be provided that reflect the technological reality of digital commerce, and are sufficiently technology neutral to accommodate further technological developments.

Signatures [Consultation Questions 1–6]

What is a 'signature'?

28. The Committee considers there is a lack of clarity as to what constitutes a 'signature' in the context of electronic documents and websites, and recommends that this be clarified in a technology-neutral way to accommodate further developments in electronic/digital commerce and trade.
29. The Acts are not entirely clear as to whether an electronic signature is functionally equivalent to a traditional 'wet ink' signature in the context of contract law. The case law has delivered inconsistent or inconclusive findings in this regard (e.g. *eBay v Creative Festival* (2006) 170 FCR 450, which implies that clicking 'I agree' is the same as signing but does not say so conclusively), and has also identified other forms of electronic communication as amounting to 'signature' for statutory signing purposes despite these communications not being expressly recognised by those statutes (e.g. email signature block in *Stellard v North Queensland Fuel* [2015] QSC 119 and *Neocleous v Rees* [2019] EWHC 2462).
30. In some instances, legal practitioners are forced to rely on American jurisprudence in an attempt to determine what may be acceptable. This results in inconsistencies in legal practice in terms of some practitioners accepting emails as 'signatures' and others not doing so.
31. The Committee recommends that a simple functional definition of signature be provided to avoid uncertainty and provide for consistency. Ideally, the first principles identified above in relation to a signature being an act the consequences of which depend on the context in which it was done and the objective intent of the signatory need to be recognised as the proper subject of an evidentiary trail that may be used to either prove the signature, the signatory, the time and place, the witness, and also where repudiation needs to be foreclosed either rebuttably or irrebuttably to reflect proper policy considerations in particular situations, such as vulnerable persons. Much existing legislation that addresses those situations will operate as long as the Act explicitly accommodates that. Examples include State unfair contracts regimes, consumer credit regimes, and even common law principles of coercion or undue influence. The Act needs to be neutral in the sense that it makes a digital or electronic signature equal in evidentiary value to a conventional handwritten signature with the same consequences and the same ability to repudiate being governed by common law or specific statutory regimes.

Paradigm of the double negative

32. Furthermore, the ETA was originally introduced with the objective of removing peoples' doubt as to the validity of consent to agreements via electronic transactions. The intention was that the common law would continue to define what a signature is. However, if a party were concerned that the signature was not on a piece of paper in ink, then the ETA would serve to remove that doubt. As a result, the language of the ETA is drafted in a double negative (the paradigm of the double negative). Namely, a transaction 'will not be invalid only because ...'
33. The Committee proposes that the Acts be amended to remove definitions of validity phrased in the double negative ('is not invalid if ...') and instead frame them as inclusive, positive definitions ('a signature is valid if it does X and includes (but is not limited to) the following kinds of electronic communication: (a) email signature ...' etc).

Alternatively, have such examples included in regulations that operate as a type of 'safe harbour'.

34. Facilitative statutes of broad application like the Electronic Transactions Acts cover a very wide range of signing contexts across which the importance of the evidentiary function and cautionary protective function of signatures varies enormously. Signing a power of attorney or a consent to a medical procedure or a mortgage or a deed of release usually carries far more consequences than signing an invoice or record of hours worked. It is difficult for such a statute to set a single rule other than that the signing method must be "as reliable as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement". The generality of that rule leads to practical uncertainty. This will ultimately be resolved by case law but that is a slow process.
35. In order to provide more certainty without removing the flexibility of the general standard, specified types of signature method should be deemed appropriately reliable for specified purposes. For example a two-factor authentication signature method using a device reasonably expected to be in the possession of the apparent signer is appropriately reliable for a range of specified governmental and commercial business-to-business purposes.
36. By way of further example, a 'Gatekeeper' standard public key infrastructure (**PKI**) digital signature verified by an online certificate validity check is appropriately reliable for a different set of specified governmental and commercial business to business purposes. This provides for safe harbours in the regulations without disqualifying any other method from being shown to be as reliable as appropriate in the circumstances. It does not stifle technological innovation and the development of better signature methods in the future.
37. The Committee recommends that the Act be amended to provide that the regulations may specify that particular types or modes of signature are deemed to be appropriately reliable for specified purposes, perhaps on the condition that they are accompanied by contemporaneous evidence of context and intent as advocated above.

Witnessing

38. The Committee recommends that there be:
 - (a) a facilitative provision permitting remote witnessing/attestation etc by a person who witnesses a first person electronically signing an electronic document by an audio-visual system and who then signs the electronic documents themselves—such a system must be appropriately reliable for the purpose;
 - (b) a regulation-making power to specify particular types of witnessing systems that are deemed to be appropriately reliable for specified purposes. The Committee suggests these could be based on the NSW and Victorian legislation permitting remote witnessing introduced during COVID and since made permanent.
39. The Committee further notes that verifiable digital identity (whether it be centrally managed such as MyGovID or other form of zero-knowledge proof or decentralised identity system) will increasingly be adopted. As such these technological solutions may remove the need for legal requirements for witnessing over time in many

circumstances. Legislators and policy makers will need to consider whether a human third-party witness to a primary signing act is required for a particular purpose or whether it is sufficient that a third-party system validated the apparent identity of the primary signer (based on the signer's knowledge of secret codes or possession of a device or key which generates one-time codes as for MyGov ID). This will depend in part on the consequences of the act of signing and the role witnessing is intended to play in those circumstances.

Record-keeping [Consultation Questions 1–5]

40. In respect of record keeping, as noted above, where the validity of a signature is dependent on the context in which it was done and the intent of the signatory, nothing in the Act is intended to displace the requirement for those elements to be proven by admissible evidence, but where those elements are effectively captured and 'packaged' with the bare signature, presumptive validity ought to be accorded.

Need for the ETA to address treatment of deeds

41. In relation to the treatment of deeds, the Committee recommends adoption of the NSW (*Conveyancing Act*) provision.

Conclusion

42. Australia needs to be able to participate in global electronic commerce by adopting UNCITRAL Model Law principles as well as properly reflecting common law principles in relation to the various roles and functions that a signature may have and the evidentiary requirements necessary to be captured if there is to be presumptive validity. This can be achieved by having a single Commonwealth Act covering the field of transactions that utilise or are effected by electronic communications, or which otherwise have a nexus with another head of Commonwealth power such as the external affairs power where implementation of UNCITRAL Model Laws can be relied upon. As noted, this represents the Committee's view within the Section. The Law Council has not consulted its constituent bodies on the merits of a Commonwealth Act versus harmonisation of the now diverged State and Territory Acts, but would be happy to do so.
43. If you have any questions, please do not hesitate to contact Susannah Wilkinson, Chair of the Digital Commerce Committee (susannah.wilkinson@hsf.com) or Mark Sneddon, Deputy Chair of the Digital Commerce Committee (mark@sneddonlegal.com).

Yours faithfully



Philip Argy
Chairman
Business Law Section

Schedule 1—Summary overview of jurisdictional exemptions

This is a high-level comparison of which jurisdictions adopt (or do not adopt) the main exemptions from the Acts.

	Court / tribunal processes	Evidence Act / law	Wills	Powers of attorney	Personal service	Witnessing / attestation	Other / Comments
Cth	Exempt	Exempt	N/A	N/A	N/A	N/A	Sch 1 of the Regulations lists many exempt Cth legislation. Production of certain migration and citizenship documents is exempt from s 11.
NSW	Exempt ⁷	N/A	N/A	N/A	N/A	N/A	Further list of exempted legislation in the Regulations (primarily relating to conduct of polls/elections and funding.
Vic	N/A	N/A	Exempt	N/A	Exempt	N/A	
SA	N/A	N/A	N/A	N/A	Exempt *	Exempt *	*Except in relation to certain “prescribed legal proceedings” and transactions related to land. Section 13 of the <i>Second-hand Dealers and Pawnbrokers Act 1996</i> (SA) is exempt.
WA	N/A	N/A	Exempt	Exempt	Exempt	Exempt	
Qld	Exempt	N/A	N/A	N/A	Exempt	Exempt	Further list of exemptions in sch 1 of the Act—mostly relating to financial transactions
Tas	N/A	Exempt	Exempt	Exempt	Exempt	N/A	
NT	Exempt	N/A	Exempt	Exempt	Exempt	N/A	
ACT	N/A	N/A	N/A	N/A	N/A	N/A	No exemptions apply

⁷ However, the Act establishes electronic case management system (ECM).

Schedule 2—State and Territory based Exemptions under the Acts

Jurisdiction	Location of Exemptions	Summary of Exemptions
<p>Commonwealth: Electronic Transactions Act 1999 (Cth)</p>	<p>Schedule 1 of the Electronic Transactions Regulations 2020 (Cth); s 7B of the Act; sch 1 of the Act</p>	<p>Sch 1 of the Regulations lists 91 items of legislative instruments, where specific provisions of the Act do not apply to the provisions of the listed instruments. See p 5 for the full list.</p> <p>Section 7B of the Act provides that pt 2A (additional provisions applying to contracts involving electronic communications), and div 2 of pt 2 (requirements under laws of the Commonwealth) do not apply to the practice or procedure of a court or tribunal; and do not affect the operation of the <i>Evidence Act 1995 (Cth)</i> or an equivalent law of a state or territory, or the common law.</p> <p>Sch 1 of the Act provides that s 11 (production of documents) does not apply to certain migration or citizenship documents.</p>
<p>NSW: Electronic Transactions Act 2000 (NSW)</p>	<p>Electronic Transactions Regulation 2017 (NSW)</p>	<p>Section 7(1) (validity of electronic transactions) and div 2 of pt 2 (requirements under laws of this jurisdiction) of the Act do not apply to the following Acts and any regulations under those Acts:</p> <ul style="list-style-type: none"> • <i>Election Funding, Expenditure and Disclosures Act 1981 (NSW)</i> • <i>Government Information (Public Access) Act 2009 (NSW)</i> • Chapter 10 of the <i>Local Government Act 1993 (NSW)</i> • <i>Parliamentary Electorates and Elections Act 1912 (NSW)</i> • <i>Poisons and Therapeutic Goods Act 1996 (NSW)</i> • Any other Act or regulation that makes provision for the conduct of polls or elections by the Electoral Commissioner <p>Div 2 of pt 2 of the Act does not apply to any requirements in relation to documents filed/signed/produced in connection with legal proceedings (reg 5), but see sch 1 of the Act establishing the electronic case management system (ECM).</p>

<p>Victoria: Electronic Transactions (Victoria) Act 2000 (Vic)</p>	<p>Electronic Transactions (Victoria) Regulations 2020 (Vic)</p>	<p>Section 7(1) (validity of electronic transactions) and div 2 of pt 2 (requirements under laws of this jurisdiction) of the Act do not apply to:</p> <ul style="list-style-type: none"> • any transaction by which a will, a codicil or any other testamentary instrument is created, executed or revoked • any transaction (being the delivery of information or a document) required to be effected only by personal service.
<p>SA: Electronic Communications Act 2000 (SA)</p>	<p>Electronic Communications Regulations 2017 (SA)</p>	<p>Unless related to certain “prescribed legal proceedings”, being:</p> <ul style="list-style-type: none"> • proceedings under the <i>Summary Procedure Act 1921 (SA)</i> • proceedings related to: <ul style="list-style-type: none"> ○ enforcement of a sentence for an offence; ○ enforcement and recovery of fines ○ issue and recovery of expiation fees ○ orders of a court of a restrictive nature made under the Summary Procedure Act 1921 (SA) ○ orders of a court made under the <i>Intervention Orders (Prevention of Abuse Act) 2009 (SA)</i> <p>section 7(1), and pt 2 div 2, of the Act do not apply to:</p> <ul style="list-style-type: none"> • a law of the jurisdiction requiring a document be witnessed, attested, verified or authenticated under the signature of a person other than the author of the document, except where it is a law relating to a dealing with land (e.g., disposition of land) • a law of the jurisdiction requiring delivery of a document be effected by personal service only; • s 13 of the <i>Second-hand Dealers and Pawnbrokers Act 1996 (SA)</i>
<p>WA: Electronic Transactions Act 2011 (WA)</p>	<p>Electronic Transactions Regulations 2012 (WA)</p>	<p>Section 8(1) (validity of electronic transactions), and pt 2 div 2 (things done under laws of this jurisdiction), of the Act do not apply to:</p> <ul style="list-style-type: none"> • any transaction creating an instrument appointing an enduring power of attorney or appointing an attorney to manage a person’s affairs • any transaction requiring a document be verified, authenticated, attested or witnessed under the signature of a person other than the author of the document • any transaction required to be effected by personal service only <p>Further, pt 2 div 2 does not apply to a requirement or permission relating to the creation, execution or revocation of a will, codicil or other testamentary instrument</p>

<p>Queensland: Electronic Transactions (Queensland) Act 2001 (Qld)</p>	<p>Schedule 1</p>	<p>The Act does not apply to:</p> <ul style="list-style-type: none"> • a requirement/permission to file/sign/produce/retain a document for a court or tribunal for a proceeding, or a party to the proceeding • a requirement/permission for a document to be served personally or by post • a requirement/permission for a document to be attested, authenticated, verified or witnessed by a person other than the author of the document • an authorisation under the <i>Trusts Accounts Act 1973</i> (Qld) • transactions on a regulated exchange • foreign exchange transactions • inter-bank payment systems, agreements or clearance and settlement systems relating to securities or other financial assets or instruments • transfer of security rights in the sale, loan or holding of or agreement to repurchase securities or other financial assets or instruments held with an intermediary • bills of exchange • promissory notes • consignment notes • bills of lading • warehouse receipts • any transferable document or other instrument that entitles the bearer or beneficiary to claim the delivery of goods or payment of a sum of money
<p>Tasmania: Electronic Transactions Act 2000 (Tas)</p>	<p>Electronic Transactions Regulations 2021 (Tas); s 10A</p>	<p>Section 5(1) (validity of electronic transactions), and div 2 of pt 2 of the Act do not apply to:</p> <ul style="list-style-type: none"> • a requirement or permission relating to the execution or revocation of a will, codicil or other testamentary instrument • a requirement or permission relating to enduring guardians or powers of attorney • a requirement that information or a document be delivered only by personal service <p>Section 10A of the Act provides that div 2 of pt 2 does not affect the operation of the <i>Evidence Act 2001</i> (Tas)</p>

<p>NT: Electronic Transactions (Northern Territory) Act 2000 (NT)</p>	<p>Electronic Transactions (Northern Territory) Regulations 2001 (NT)</p>	<p>Section 7(1) (validity of electronic transactions) of the Act does not apply to:</p> <ul style="list-style-type: none"> • any transaction in the nature of a disposition of property by will or revocation of a will • any transaction in the nature of the creation or revocation of a power of attorney <p>Div 2 of Part 2 of the Act does not apply to:</p> <ul style="list-style-type: none"> • a requirement or permission under a law of the Territory for a person to: <ul style="list-style-type: none"> ○ give, record or retain information in writing in respect of a will or the revocation or a will; produce ○ produce a document in the nature of a will or revocation of a will; or ○ sign a will or revocation of a will • a requirement or permission under a law of the Territory for a person to: <ul style="list-style-type: none"> ○ give, record or retain information in writing in respect of the creation or revocation of a power of attorney ○ produce an instrument creating or revoking a power of attorney ○ sign an instrument creating or revoking a power of attorney • a requirement to give information only by personal service of the information <p>Section 8(1)(b) (requirement to give information in writing) does not apply to any requirement or permission to give information in accordance with the rules of court.</p> <p>Section 9(1)(c) (signatures) does not apply to any requirement to give a signature in accordance with the rules of court.</p> <p>Sections 13 (time of dispatch) and 13A (time of receipt) of the Act do not apply in relation to ordinary service in accordance with rules of court.</p>
<p>ACT: Electronic Transactions Act 2001 (ACT)</p>	<p>Can be provided under Regulations</p>	<p>N/A</p>

Schedule 3—Full list of exempted instruments under Schedule 1 to the Commonwealth Regulations

Exempt from ss 9 (writing), 10 (signature) and 11 (production of documents):

- Subordinate legislation made under the *A New Tax System (Family Assistance) Act* (1999) (Cth)
- *A New Tax System (Family Assistance) (Administration) Act 1999* Part 3, Division 2 of Part 5, Division 1 of Part 6, Part 8, Division 1 of Part 8A and Part 8B
- Subordinate legislation made under the *A New Tax System (Family Assistance) (Administration) Act 1999*
- *Aged Care Act 1999* (Cth) ss 13–1, 15-3, 15–5, 15–7, 16–2, 17–2, 22–3, 32–3, 35–2, 43–4, 43–5, 43-6, 44-23, 44–24, 44-31, 47–4, 48-11, 71-1, 73–5, 81–2, 82-2 and 85–5
- *Child Support (Assessment) Act 1989*, pt 6A
- *Customs Act 1901* (Cth), ss 42, 71DA, 114A, 117, 162 and 162A
- *Customs Regulations 2015* s 99
- *Paid Parental Leave Act 2010*, Parts 2-4, 3-5, 3A-4, 4-1, 5-2, 5-3 and 6-2
- Subordinate legislation made under the *Paid Parental Leave Act 2010*
- Subordinate legislation made under the *Social Security Act 1991*
- *Social Security (Administration) Act 1999*, Divisions 1 and 6 of Part 3 and Division 1 of Part 5
- Subordinate legislation made under the *Social Security (Administration) Act 1999*
- Subordinate legislation made under the *Social Security (International Agreements) Act 1999*

Exemption from ss 9 and 10:

- *Customs Regulations 2015*, s 27

Exempt from s 10:

- *Statutory Declarations Act 1959*

Exempt from ss 10 and 11:

- *Customs Regulations 2015*, s 94

Exempt from s 11:

- *Aged Care Act 1997* (Cth), ss 22–5, 33–4, 71–3
- *Australian Crime Commission Act 2002* (Cth), ss 21A(1), 28(1) and 28(4)
- *Customs Act 1901* (Cth), s 64AE, 124(1)(a), 214B(4)
- *Health Insurance Act 1973* (Cth), ss 89B, 105A, 106B
- *Maritime Powers Act 2013* (Cth), s 57
- *Protection of the Sea (Harmful Anti-fouling Systems) Act 2006* (Cth), ss 16(4), 17(2)(g), 17(2)(h) and 17(2)(i)

Exemption from ss 9 and 12 (retention):

- *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*, s 11A(3)

Exempt from s 8(1) (validity of electronic transactions), div 2 pt 2 (application of legal requirements to electronic communications—i.e., ss 9–12), ss 14 (time of dispatch), 14A (time of receipt), 14B (place of dispatch and place of receipt) and 15 (attribution of electronic communications):

- *Australian Passports Act 2005*
- *Australian Passports Determination 2015*
- *Australian Securities and Investments Commission Act 2001*
- Subordinate legislation made under the *Australian Securities and Investments Commission Act 2001*
- *Banking Act 1959* (Cth) ss 13(1), 13B(1), 14A(2), 16AK(1), 16B(1), 61A, 62(1), 62E
- *Bill of Exchange Act 1909* (Cth)
- *Cheques Act 1986*
- Subordinate legislation made under the *Cheques Act 1986* (Cth)
- *Commonwealth Electoral Act 1918* (Cth), s 115, pt XV (other than ss 184 and 184A), 194(1A)(a)(ii)-(iii), 194(1A)(d), pt XVA, pt XVI
- *Commonwealth Inscribed Stock Act 1911* (Cth)
- Subordinate legislation made under the *Commonwealth Inscribed Stock Act 1911* (Cth)
- *Competition and Consumer Act 2010*, sections 44ZH, 95ZK, 95S, 133D, 155 and 155A
- *Corporations Act 2001*
- Subordinate legislation made under the *Corporations Act 2001* (Cth)
- *Farm Household Support Act 2014*
- *Insurance Act 1973*, ss 49, 55(1), 62C(1)(a), 62C(2)(a), 62ZD(1), 62ZOD(2), 62ZT(1), 62ZZP(1), 77(1), 81(2)(a), 92H, 115, 115AA
- *Life Insurance Act 1995* ss 88B, 98B, 131, 132, 141, 170, 179AD(2), 185
- *Mutual Assistance in Business Regulation Act 1992*, ss 10(2), 10(3) and 17
- Schedule 1 to the *National Consumer Credit Protection Act 2009* (Cth), ss 88, 99(1)(b), 102(1), 130(5)(a), 130(6)(a), 178(1), a provision that provides that duty is charged on a transaction only if the transaction is effected or evidenced by an instrument or document in hard copy form, and a provision that provides that duty is charged on an instrument only if the instrument is in hard copy form
- *National Consumer Credit Protection Regulations 2010*, s 87(a), 87(c), a provision that provides that duty is charged on a transaction only if the transaction is effected or evidenced by an instrument or document in hard copy form, and a provision that provides that duty is charged on an instrument only if the instrument is in hard copy form

- *Private Health Insurance (Prudential Supervision) Act 2015*, ss 13, 36, 73, 112, 128, 129 and 132
- *Referendum (Machinery Provisions) Act 1984*, Parts III (other than ss 16A(1), (2), (4) and (5)), IV and IVA
- *Retirement Savings Accounts Act 1997*, ss 92, 93 and 100
- *Shipping Registration Act 1981*
- *Shipping Registration Regulations 2019*
- *Superannuation Industry (Supervision) Act 1993* (except for ss 20B(1A), 20B(3A)(b), 29E(6B), 29SAA(1)(a)(i), 29SAA(3), 29WA, 29WB, 35B, 68AAA(2), 68AAB(2), 68AAC(2), 99FA(1))
- Subordinate legislation made under the *Superannuation Industry (Supervision) Act 1993*, other than the prudential standards made under s 34C of that Act; and regs 9.46 and 9.46A of the *Superannuation Industry (Supervision) Regulations 1994*
- *Torres Strait Regional Authority (Election of Officeholders) Regulations 2019*, ss 7 and 14

Exempt from ss 14, 14A and 14B:

- *Migration Act 1958* ss 379A(5), 441A(5), 494B(5)
- *Migration Regulations 1994*, regs 2.55(3)(d), 2.55(3A)(d), 2.55(3A)(f)

Schedule 4—Temporary measures during the COVID-19 pandemic

The measures taken by each jurisdiction are briefly summarised below.

1. New South Wales

- 1.1 Now repealed Part 4 of the NSW Act contained special provisions for the COVID-19 pandemic.
- 1.2 Section 17 of the NSW Act allowed regulations to provide for altered arrangements for the signature of documents, witnessing signatures, and attestation of documents.
- 1.3 Regulations were made and in effect on 22 April 2020. Schedule 1 of the Regulations provided that a signature may be witnessed by audio visual link in relation to a will; power of attorney, deed or agreement, enduring guardianship appointment, an affidavit, a statutory declaration.
- 1.4 Part 4 of the NSW Act, and the corresponding regulations, were repealed on 26 March 2021—but as noted above the provisions are now reflected in Part 2B of the Act.

2. Victoria

- 2.1 Part 2 of the [COVID-19 Omnibus \(Emergency Measures\) \(Electronic Signing and Witnessing\) Regulations 2020 \(Vic\)](#) (“**Vic COVID Regulations**”) modified provisions of the Vic Act.
- 2.2 The Vic COVID Regulations also amended the:
 - *Oaths and Affirmations Act 2018* (Vic)
 - *Powers of Attorney Act 2014* (Vic)
 - *Wills Act 1997* (Vic).
- 2.3 The Vic COVID Regulations were revoked on 26 April 2021.
- 2.4 However, on the same day, the [Justice Legislation Amendment \(System Enhancements and Other Matters\) Act 2021 \(Vic\)](#) came into effect. Part 10 amended the Vic Act, introducing the provisions mentioned above with respect to remote witnessing, deeds and mortgages.

3. Queensland

- 3.1 Queensland introduced the [Justice Legislation \(COVID-19 Emergency Response—Documents and Oaths\) Regulation 2020 \(Qld\)](#) effective from 15 May 2020 which provided modified arrangements for wills and enduring documents, and the signing and witnessing of documents.
- 3.2 Further amendments were made to include provisions in relation to affidavits, declarations, oaths and affirmations, deeds, powers of attorney and mortgages on [22 May 2020](#).

3.3 The Part relating to wills was repealed on 1 July 2021, and the rest of the regulations expired on 30 April 2022.

4. **Western Australia**

4.1 The [COVID-19 Response and Economic Recovery Omnibus Act 2020 \(WA\)](#) was effective from 12 September 2020 and provided a range of modified arrangements, which included allowing documents to be witnessed by audio visual communication (pt 2, div 3) under certain circumstances.

4.2 Section 25 specifically provided that the provisions are in addition to, and not in substitution for the WA Act, the *Oaths, Affidavits and Statutory Declarations Act 2005 (WA)*, or any other law that authorises or permits the use of electronic processes.

4.3 Further, s 25(2) provided that regs 3 and 4 of the WA Regulations do not apply where pt 2, div 3 applies. Regulations 3 and 4 of the WA Regulations set out the exemptions to the WA Act.

4.4 These provisions ceased on 31 December 2022.

5. **South Australia**

5.1 Section 16 of the [COVID-19 Emergency Response Act 2020 \(SA\)](#) allowed the Governor to, by regulation, suspend or modify any requirements under an Act or law or instrument relating to the preparation, signing, witnessing, attestation, certification, stamping or other treatment of any document.

5.2 The *COVID-19 Emergency Response (Section 16) Regulations 2020 (SA)* were made on [25 June 2020](#), which:

- expanded the persons who are able to take a statutory declaration
- suspended certain requirements under s 128 of the *Real Property Act 1886 (SA)*
- allowed electronic copies of logbooks under s 79A(1)(a)(ii)(A) of the *Motor Vehicles Act 1959 (SA)* to be produced (in place of a physical copy).

5.3 The provision with respect to the suspension of requirements under s 128 of the *Real Property Act 1886 (SA)* was repealed on 9 September 2021.

5.4 On [14 October 2021](#), the regulations were amended to also allow the taking of affidavits by audio visual link.

5.5 The regulations ceased on 1 December 2021.

6. **Tasmania**

6.1 Section 17 of the [COVID-19 Disease Emergency \(Miscellaneous Provisions\) Act 2020 \(Tas\)](#) provided that the Minister may, by notice, declare that, despite any relevant legislative instrument, any action that is required by means of physical action (e.g., signature or personal service) may be done by specified electronic means.

6.2 A notice was published in the Government Gazette on [3 April 2020](#) to that effect with respect to the following:

- Sections 237 and 238(1) of the *Local Government Act 1993* (Tas)
- Regulations 4(7), 34(6), 35(1)(b) of the *Local Government (Meeting Procedures) Regulations 2015* (Tas).

7. **Australian Capital Territory**

7.1 Section 4 of the [COVID-19 Emergency Response Act 2020 \(ACT\)](#) provided for the witnessing and attestation of certain documents by audio visual link.

7.2 Section 4 was in effect from 14 May 2020—30 December 2022.

8. **Northern Territory**

None identified.

9. **Commonwealth**

9.1 [Schedule 8 of the Coronavirus Economic Response Package Omnibus Act 2020 \(Cth\)](#) amended the *Corporations Act 2001* (Cth) to allow the Minister to, by legislative instrument, exempt persons from the operation of specified provisions, or modify the operation of specified provisions.

9.2 The Minister subsequently made the [Corporations \(Coronavirus Economic Response\) Determination \(No 1\) 2020 \(Cth\)](#) which modified the operation of s 127(1) of the *Corporations Act 2001* (Cth) to allow the execution of company documents electronically—with an effective date 22 September 2020.

9.3 The *Coronavirus Economic Response Package Omnibus (Measures No 2) Act 2020* (Cth) received assent on 9 April 2020. Under provisions introduced in that Act, the Minister made the [Coronavirus Economic Response Package \(Modifications—Statutory Declarations and Notices of Intention to Marry\) Determination 2021 \(Cth\)](#), with effect from 14 December 2021. This allowed statutory declarations to be made using electronic signatures, and witnessing to occur by audio visual link.

9.4 The [Corporations Amendment \(Meetings and Documents\) Act 2022](#) (Cth) received assent on 22 February 2022, which made permanent changes to the *Corporations Act 2001* (Cth), providing for technology-neutral signing.

Schedule 5—UNCITRAL Model Law on Electronic Commerce in other jurisdictions

This schedule lists relevant countries that have legislation based on, or influenced by, the UNCITRAL Model Law on Electronic Commerce (1996). This model law has been adopted in 83 States and a total of 164 jurisdictions. See the UNCITRAL website⁸ for the full list of states and jurisdictions:

9.5 Canada

The [*Personal Information Protection and Electronic Documents Act, SC 2000, c 5*](#) is the federal legislation. Part 2 deals with electronic documents. Like Australia, provinces in Canada also have their own legislation:

- Alberta: [*Electronic Transactions Act, SA 2001, c E-5.5*](#)
- British Columbia: [*Electronic Transactions Act, SBC 2001, c 10*](#)
- Manitoba: [*Electronic Commerce and Information Act, SM 2000, c E55*](#)
- New Brunswick: [*Electronic Transactions Act, RSMB 2011, c 145*](#)
- Newfoundland and Labrador: [*Electronic Commerce Act, SNL 2001, c E-5.2*](#)
- Northwest Territories: [*Electronic Transactions Act, SNWT 2011, c 13*](#)
- Nova Scotia: [*Electronic Commerce Act, SNS 2000, c 26*](#)
- Nunavut: [*Electronic Commerce Act, SNu 2004, c 7*](#)
- Ontario: [*Electronic Commerce Act, SO 2000, c 17*](#)
- Prince Edward Island: [*Electronic Commerce Act, SPEI 2001, c E 4.1*](#)
- Quebec: [*Electronic Commerce Act, SQ 2001, c 1.1*](#)
- Saskatchewan: [*Electronic Information and Documents Act, SS 2000, E-7.22*](#)
- Yukon: [*Electronic Commerce Act, SY 2000, c 66*](#)

9.6 Hong Kong: [*Electronic Transactions Ordinance \(Hong Kong\) cap 553*](#)

9.7 Ireland: [*Electronic Commerce Act 2000 \(Ireland\)*](#)

9.8 Malaysia: [*Electronic Commerce Act 2006 \(Malaysia\)*](#)

9.9 New Zealand: [*Electronic Transactions Act 2002 \(NZ\)*](#)

9.10 South Africa: [*Electronic Communications and Transactions Act 2002 \(South Africa\)*](#)

9.11 United Kingdom: [*Electronic Communications Act 2000 \(UK\)*](#)

⁸ https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic_commerce/status

9.12 United States

In the US, the Uniform Law Commission drafted the *Uniform Electronic Transactions Act* 1999. A copy of the uniform Act, as well as the states who have enacted it, is available on this website:
<https://www.uniformlaws.org/committees/community-home?CommunityKey=2c04b76c-2b7d-4399-977e-d5876ba7e034#:~:text=The%20Uniform%20Electronic%20Transactions%20Act,removing%20barriers%20to%20electronic%20commerce>