



Electronic Transactions (Queensland) Act 2001

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Reprint note

Section 44 of the Reprints Act has been relied on to make an editorial change to s 26E(1)(b).

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Queensland

Electronic Transactions (Queensland) Act 2001

Contents

		Page
Chapter 1	Preliminary	
1	Short title	3
2	Commencement	3
3	Object	3
4	Simplified outline	3
5	Attachment—flowchart	5
6	Definitions	5
7	Act binds all persons	5
7A	Act does not apply to particular transactions etc.	5
Chapter 2	Requirements for electronic communications	
Part 1	General rule about validity of transactions for State laws	
8	Validity of electronic transactions	6
Part 2	Requirements under State laws	
Division 1	Writing	
9	Application	6
10	Definitions for div 1	6
11	Requirement to give information in writing	7
12	Permission to give information in writing	7
13	Other particular laws not affected	8
Division 2	Signatures	
14	Requirement for signature	8
15	Other particular laws not affected	9
Division 3	Production of document	
16	Requirement to produce document	9
17	Permission to produce a document	10
18	Other particular laws not affected	11

Contents

Division 4	Recording and keeping information and documents	
19	Recording information	11
20	Keeping written documents	12
21	Keeping electronic communications	13
Part 3	Other provisions about State laws	
Division 1	Application	
22	Application of part 3	14
Division 2	Time of dispatch and receipt	
23	Time of dispatch	14
24	Time of receipt	15
25	Place of dispatch and receipt	16
Division 3	Other provisions	
26	Attribution of electronic communications	17
Part 4	Additional provisions applying to contracts involving electronic communication	
26A	Application and operation of this part	18
26B	Invitation to treat regarding contracts	18
26C	Use of automated message system for contract formation—non-intervention of individual	18
26D	Error in electronic communication regarding contracts	19
26E	Application of Act in relation to contracts	20
Chapter 3	Miscellaneous	
27	Regulation-making power	20
Chapter 4	Transitional provision	
28	Transitional provision for Justice and Other Legislation Amendment Act 2013	21
Schedule 1	Excluded transactions	22
Schedule 2	Dictionary	24

Electronic Transactions (Queensland) Act 2001

An Act to facilitate electronic transactions, and for other purposes

Chapter 1 Preliminary

1 Short title

This Act may be cited as the *Electronic Transactions (Queensland) Act 2001*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Object

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

- (a) recognises the importance of the information economy to the future economic and social prosperity of Queensland; and
- (b) facilitates the use of electronic transactions; and
- (c) promotes business and community confidence in the use of electronic transactions; and
- (d) enables business and the community to use electronic communications in their dealings with government.

4 Simplified outline

- (1) The following is a simplified outline of this Act—

- (a) a transaction is not invalid under a State law merely because it took place by 1 or more electronic communications;
 - (b) the following requirements imposed under a State law can generally be met in electronic form—
 - (i) a requirement to give information in writing;
 - (ii) a requirement to provide a signature;
 - (iii) a requirement to produce a document;
 - (iv) a requirement to record information;
 - (v) a requirement to keep a document;
 - (c) for a State law, provision is made for determining the time and place of the dispatch and receipt of an electronic communication;
 - (d) the purported originator of an electronic communication is bound by it under a State law only if the communication was sent by the purported originator or with the purported originator's authority.
- (2) Chapter 2, part 4 contains provisions applying to contracts involving electronic communications, including provisions (relating to the internet in particular) for the following—
- (a) an unaddressed proposal to form a contract is to be regarded as an invitation to make offers, rather than as an offer that if accepted would result in a contract;
 - (b) a contract formed automatically is not invalid, void or unenforceable because there was no human review or intervention;
 - (c) a portion of an electronic communication containing an input error can be withdrawn in certain circumstances;
 - (d) the application of certain provisions of chapter 2, parts 1 to 3 to contracts involving electronic communications to the extent they do not apply of their own force.

5 Attachment—flowchart

- (1) The attachment to this Act shows the way in which some of the definitions in the dictionary and the concepts underlying this Act are linked when an electronic communication is used for a transaction.
- (2) The attachment does not form part of this Act.
- (3) If the Act is amended, the attachment must be revised so that it is accurate.
- (4) The revision must be made in the first reprint of this Act after the amendments.

6 Definitions

The dictionary in schedule 2 defines particular words used in this Act.

7 Act binds all persons

This Act binds all persons including the State and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.

7A Act does not apply to particular transactions etc.

- (1) This Act does not apply to a transaction, requirement, permission, electronic communication or other matter of a kind mentioned in schedule 1.
- (2) A regulation may provide that this Act does not apply to a transaction, requirement, permission, electronic communication or other matter not mentioned in schedule 1.
- (3) A regulation made under subsection (2) expires 1 year after the regulation is made.

Chapter 2 Requirements for electronic communications

Part 1 General rule about validity of transactions for State laws

8 Validity of electronic transactions

- (1) A transaction is not invalid under a State law merely because it took place wholly or partly by 1 or more electronic communications.
- (2) However, the general rule in subsection (1) does not apply for the validity of a transaction to the extent to which another, more specific, provision of this chapter deals with its validity.

Part 2 Requirements under State laws

Division 1 Writing

9 Application

This division applies to a requirement or permission to give information, whether the expression give, send or serve, or another expression, is used.

10 Definitions for div 1

In this division—

give information includes, but is not limited to, the following—

- (a) make an application;

- (b) make or lodge a claim;
- (c) give, send or serve a notification;
- (d) lodge a return;
- (e) make a request;
- (f) make a declaration;
- (g) lodge or issue a certificate;
- (h) make, vary or cancel an election;
- (i) lodge an objection;
- (j) give a statement of reasons.

11 Requirement to give information in writing

- (1) If, under a State law, a person is required to give information in writing, the requirement is taken to have been met if the person gives the information by an electronic communication in the circumstances stated in subsection (2).
- (2) The circumstances are that—
 - (a) at the time the information was given, it was reasonable to expect the information would be readily accessible so as to be useable for subsequent reference; and
 - (b) the person to whom the information is required to be given consents to the information being given by an electronic communication.

12 Permission to give information in writing

- (1) If, under a State law, a person is permitted to give information in writing, the person may give the information by an electronic communication in the circumstances stated in subsection (2).
- (2) The circumstances are that—

[s 13]

- (a) at the time the information was given, it was reasonable to expect the information would be readily accessible so as to be useable for subsequent reference; and
- (b) the person to whom the information is permitted to be given consents to the information being given by an electronic communication.

13 Other particular laws not affected

Sections 11 and 12 do not affect the operation of another State law that makes provision about requiring or permitting information to be given, in accordance with particular information technology requirements—

- (a) on a particular kind of data storage device; or
- (b) by a particular kind of electronic communication.

Division 2 Signatures

14 Requirement for signature

- (1) If, under a State law, a person's signature is required, the requirement is taken to have been met for an electronic communication if—
 - (a) a method is used to identify the person and to indicate the person's intention in relation to the information communicated; and
 - (b) the method used was either—
 - (i) as reliable as appropriate for the purposes for which the electronic communication was generated or communicated, having regard to all the circumstances, including any relevant agreement; or
 - (ii) proven in fact to have fulfilled the functions described in paragraph (a), by itself or together with further evidence; and

- (c) the person to whom the signature is required to be given consents to the requirement being met by using the method mentioned in paragraph (a).
- (2) The reference in subsection (1) to a law that requires a signature includes a reference to a law that provides consequences for the absence of a signature.

15 Other particular laws not affected

Section 14 does not affect the operation of another State law that makes provision for or in relation to requiring—

- (a) an electronic communication to contain an electronic signature, however described; or
- (b) an electronic communication to contain a unique identification in an electronic form; or
- (c) a particular method to be used for an electronic communication to identify the originator of the communication and to indicate the originator's intention in relation to the information communicated.

Division 3 Production of document

16 Requirement to produce document

- (1) If, under a State law, a person is required to produce a document that is in the form of paper, an article or other material, the requirement is taken to have been met if the person produces, by an electronic communication, an electronic form of the document in the circumstances stated in subsection (2).
- (2) The circumstances are that—
- (a) having regard to all the relevant circumstances when the communication was sent, the method of generating the electronic form of the document provided a reliable way of maintaining the integrity of the information contained in the document; and

[s 17]

- (b) when the communication was sent, it was reasonable to expect the information contained in the electronic form of the document would be readily accessible so as to be useable for subsequent reference; and
 - (c) the person to whom the document is required to be produced consents to the production, by an electronic communication, of an electronic form of the document.
- (3) For subsection (2)(a), the integrity of information contained in a document is maintained only if the information has remained complete and unaltered, apart from—
- (a) the addition of any endorsement; or
 - (b) any immaterial change;
- arising in the normal course of communication, storage or display.

17 Permission to produce a document

- (1) If, under a State law, a person is permitted to produce a document in the form of paper, an article or other material, then, instead of producing the document in that form, the person may produce, by an electronic communication, an electronic form of the document in the circumstances stated in subsection (2).
- (2) The circumstances are that—
- (a) having regard to all the relevant circumstances when the communication was sent, the method of generating the electronic form of the document provided a reliable way of maintaining the integrity of the information contained in the document; and
 - (b) when the communication was sent, it was reasonable to expect the information contained in the electronic form of the document would be readily accessible so as to be useable for subsequent reference; and

-
- (c) the person to whom the document is permitted to be produced consents to the production, by an electronic communication, of an electronic form of the document.
- (3) For subsection (2)(a), the integrity of information contained in a document is maintained only if the information has remained complete and unaltered, apart from—
- (a) the addition of any endorsement; or
 - (b) any immaterial change;
- arising in the normal course of communication, storage or display.

18 Other particular laws not affected

Sections 16 and 17 do not affect the operation of another State law that makes provision for or in relation to requiring or permitting electronic forms of documents to be produced, in accordance with particular information technology requirements—

- (a) on a particular kind of data storage device; or
- (b) by a particular kind of electronic communication.

Division 4 Recording and keeping information and documents

19 Recording information

- (1) If, under a State law, a person is required to record information in writing, the requirement is taken to have been met if the person records the information in electronic form in the circumstances stated in subsection (2).
- (2) The circumstances are that—
 - (a) at the time the information was recorded, it was reasonable to expect the information would be readily

accessible so as to be useable for subsequent reference;
and

- (b) if a regulation requires the information to be recorded on a particular kind of data storage device, the requirement has been met.

20 Keeping written documents

- (1) If, under a State law, a person is required to keep, for a particular period, a document that is in the form of paper, an article or other material, the requirement is taken to have been met if the person keeps, or causes another person to keep, an electronic form of the document for the period in the circumstances stated in subsection (2).
- (2) The circumstances are that—
 - (a) having regard to all the relevant circumstances when the electronic form of the document was generated, the method of generating the electronic form of the document provided a reliable way of maintaining the integrity of the information contained in the document; and
 - (b) when the electronic form of the document was generated, it was reasonable to expect the information contained in the electronic form of the document would be readily accessible so as to be useable for subsequent reference; and
 - (c) if a regulation requires the electronic form of the document to be kept on a particular kind of data storage device, the requirement has been met for the period.
- (3) For subsection (2)(a), the integrity of information contained in a document is maintained only if the information has remained complete and unaltered, apart from—
 - (a) the addition of any endorsement; or
 - (b) any immaterial change;

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

21 Keeping electronic communications

- (1) If, under a State law, a person (*keeper*) is required to keep, for a particular period, information that was the subject of an electronic communication, the requirement is taken to have been met if the keeper keeps, or causes another person to keep, in electronic form, the information for the period in the circumstances stated in subsection (2).
- (2) The circumstances are that—
 - (a) at the commencement of the keeping of the information, it was reasonable to expect the information would be readily accessible so as to be useable for subsequent reference; and
 - (b) having regard to all the relevant circumstances at the commencement of the keeping of the information, the method of keeping the information in electronic form provided a reliable way of maintaining the integrity of the information contained in the electronic communication; and
 - (c) during the period, the keeper also keeps, or causes the other person to keep, in electronic form, such additional information obtained by the keeper as is enough to enable the identification of the following—
 - (i) the origin of the electronic communication;
 - (ii) the destination of the electronic communication;
 - (iii) when the electronic communication was sent;
 - (iv) when the electronic communication was received; and
 - (d) at the commencement of the keeping of the additional information mentioned in paragraph (c), it was reasonable to expect the additional information would

be readily accessible so as to be useable for subsequent reference; and

- (e) if a regulation requires the information to be kept on a particular kind of data storage device—the requirement has been met for the period.
- (3) For subsection (2)(b), the integrity of information that was the subject of an electronic communication is maintained only if the information has remained complete and unaltered, apart from—
- (a) the addition of any endorsement; or
 - (b) any immaterial change;
- arising in the normal course of communication, storage or display.

Part 3 Other provisions about State laws

Division 1 Application

22 Application of part 3

This part applies for each State law.

Division 2 Time of dispatch and receipt

23 Time of dispatch

- (1) Unless otherwise agreed between the originator and the addressee of an electronic communication, the time of dispatch of the electronic communication is—

-
- (a) the time when the electronic communication leaves an information system under the control of the originator or of the party who sent it on behalf of the originator; or
 - (b) if the electronic communication has not left an information system under the control of the originator or of the party who sent it on behalf of the originator—the time the electronic communication is received by the addressee.
- (2) Subsection (1) applies even though the place the information system supporting an electronic address is located may be different from the place the electronic communication is taken to have been dispatched under section 25.

24 Time of receipt

- (1) Unless otherwise agreed between the originator and the addressee of an electronic communication—
- (a) the time of receipt of the electronic communication is the time the electronic communication becomes capable of being retrieved by the addressee at an electronic address designated by the addressee; or
 - (b) the time of receipt of the electronic communication at another electronic address of the addressee is the time when both—
 - (i) the electronic communication has become capable of being retrieved by the addressee at that address; and
 - (ii) the addressee has become aware that the electronic communication has been sent to that address.
- (2) For subsection (1), unless otherwise agreed between the originator and the addressee of the electronic communication, it is to be assumed that the electronic communication is capable of being retrieved by the addressee when it reaches the addressee's electronic address.
- (3) Subsection (1) applies even though the place the information system supporting an electronic address is located may be

different from the place the electronic communication is taken to have been received under section 25.

25 Place of dispatch and receipt

- (1) Unless otherwise agreed between the originator and the addressee of an electronic communication—
 - (a) the electronic communication is taken to have been dispatched at the place the originator has its place of business; and
 - (b) the electronic communication is taken to have been received at the place the addressee has its place of business.
- (2) For the application of subsection (1) to an electronic communication—
 - (a) a party's place of business is assumed to be the location indicated by the party, unless another party demonstrates the party making the indication does not have a place of business at that location; and
 - (b) if a party has not indicated a place of business and has only one place of business, it is to be assumed that place is the party's place of business; and
 - (c) if a party has not indicated a place of business and has more than one place of business, the place of business is that which has the closest relationship to the underlying transaction, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the transaction; and
 - (d) if a party has not indicated a place of business and has more than one place of business, but paragraph (c) does not apply—it is to be assumed the party's principal place of business is the party's only place of business; and
 - (e) if a party is an individual and does not have a place of business—it is to be assumed the party's place of business is the place of the party's habitual residence.

- (3) A location is not a place of business merely because that is—
 - (a) where equipment and technology supporting an information system used by a party are located; or
 - (b) where the information system may be accessed by other parties.
- (4) The sole fact that a party makes use of a domain name or electronic mail address connected to a specific country does not create a presumption that its place of business is located in that country.

Division 3 Other provisions

26 Attribution of electronic communications

- (1) For a State law, unless otherwise agreed between the purported originator of an electronic communication and the addressee of the communication, the purported originator of the communication is bound by the communication only if it was sent by the purported originator or with the purported originator's authority.
- (2) Subsection (1) does not limit a State law that provides for—
 - (a) conduct engaged in by a person within the scope of the person's actual or apparent authority to be attributed to another person; or
 - (b) a person to be bound by conduct engaged in by another person within the scope of the other person's actual or apparent authority.

Part 4 Additional provisions applying to contracts involving electronic communication

26A Application and operation of this part

This part applies to the use of electronic communications in connection with the formation or performance of a contract between parties where the proper law of the contract is (or would on its formation be) under the State law, and so applies—

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

26B Invitation to treat regarding contracts

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

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

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

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

26C Use of automated message system for contract formation—non-intervention of individual

A contract formed by—

(a) the interaction of an automated message system and an individual; or

(b) the interaction of automated message systems;

is not invalid, void or unenforceable on the sole ground that no individual reviewed or intervened in each of the individual actions carried out by the automated message systems or the resulting contract.

26D Error in electronic communication regarding contracts

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

(2) If—

(a) an individual makes an input error in an electronic communication exchanged with the automated message system of another party; and

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

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

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

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

[s 26E]

- (3) The right of withdrawal of a portion of an electronic communication under this section is not of itself a right to rescind or otherwise terminate a contract.
- (4) The consequences (if any) of the exercise of the right of withdrawal of a portion of an electronic communication under this section are to be determined in accordance with any applicable rule of law.

26E Application of Act in relation to contracts

- (1) Subject to subsection (2), sections 8 and 23 to 25 apply to—
 - (a) a transaction constituted by or relating to a contract; or
 - (b) an electronic communication relating to the formation or a performance of a contract;in the same way as they apply to a transaction or electronic communication referred to in those provisions.
- (2) However, this part (including subsection (1)) does not apply to or in relation to a contract to the extent that—
 - (a) parts 1 to 3 would of their own force have the same effect as this part if this part applied; or
 - (b) a law of another State (that is in substantially the same terms as parts 1 to 3) would of its own force have the same effect as this part if this part applied.

Chapter 3 Miscellaneous

27 Regulation-making power

The Governor in Council may make regulations under this Act.

Chapter 4 Transitional provision

28 Transitional provision for Justice and Other Legislation Amendment Act 2013

- (1) Subject to subsection (2)—
 - (a) section 26B extends to proposals made before the commencement; and
 - (b) section 26C extends to interactions carried out before the commencement; and
 - (c) section 26D extends to statements, declarations, demands, notices or requests, including offers and acceptance of offers, made or given before the commencement.
- (2) Subsection (1) and chapter 2, part 4 do not apply in relation to contracts formed before the commencement.
- (3) In this section—

commencement means the commencement of this section.

Schedule 1 Excluded transactions

section 7A

- 1 A requirement or permission for a person to file a document with a court or tribunal for a proceeding.
- 2 A requirement or permission for a person to sign a document to be filed with a court or tribunal for a proceeding.
- 3 A requirement or permission for a person to produce a document—
 - (a) to a court or tribunal in a proceeding; or
 - (b) to a party to a proceeding for the proceeding.
- 4 A requirement or permission for a person to retain a document that has been—
 - (a) filed with, or produced to, a court or tribunal in a proceeding; or
 - (b) admitted in evidence in a proceeding before a court or tribunal; or
 - (c) issued by a court or tribunal for a proceeding.
- 5 A requirement or permission for a document to be served personally or by post.
- 6 A requirement or permission for a document to be attested, authenticated, verified or witnessed by a person other than the author of the document.
- 7 An authorisation under the *Trust Accounts Act 1973*.
- 8 transactions on a regulated exchange
- 9 foreign exchange transactions
- 10 inter-bank payment systems, agreements or clearance and settlement systems relating to securities or other financial assets or instruments

- 11 the 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
- 12 bills of exchange
- 13 promissory notes
- 14 consignment notes
- 15 bills of lading
- 16 warehouse receipts
- 17 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

Schedule 2 Dictionary

section 6

addressee, of an electronic communication, means a person who is intended by the originator to receive the electronic communication, but does not include a person acting as an intermediary for the electronic communication.

automated message system means a computer program or an electronic or other automated means used to initiate an action or respond to data messages in whole or in part, without review or intervention by an individual each time an action is initiated or a response is generated by the system.

consents includes consent that can reasonably be inferred from the conduct of the person concerned, but does not include consent given subject to conditions unless the conditions are complied with.

data includes the whole or part of a computer program within the meaning of the *Copyright Act 1968* (Cwlth).

data storage device means any article or material (for example, a disk) from which information is capable of being reproduced, with or without the aid of another article or device.

electronic communication means—

- (a) a communication of information in the form of data, text or images by guided or unguided electromagnetic energy; or
- (b) a communication of information in the form of sound by guided or unguided electromagnetic energy, if the sound is processed at its destination by an automated voice recognition system.

give information, for chapter 2, part 2, division 1, see section 10.

information means information in the form of data, text, images or sound.

information system means a system for generating, sending, receiving, storing or otherwise processing electronic communications.

information technology requirements includes software requirements.

non-profit body means a body that—

- (a) is not carried on for profit or gain to its individual members; and
- (b) is, under the body's constitution, prohibited from making any distribution, whether in money, property or otherwise, to its members.

originator, of an electronic communication, means a person by whom, or on whose behalf, the electronic communication has been sent or generated before storage, if any, but does not include a person acting as an intermediary for the electronic communication.

performance, of a contract, includes non-performance of the contract.

place of business means—

- (a) in relation to a person, other than an entity referred to in paragraph (b)—a place where the person maintains a non-transitory establishment to pursue an economic activity other than the temporary provision of goods or services out of a specific location; or
- (b) in relation to a government, an authority of a government or a non-profit body—a place where any operations or activities are carried out by that government, authority or body.

State law means—

- (a) any law in force in the State, whether written or unwritten; or
- (b) any instrument made or having effect under a law mentioned in paragraph (a);

but does not include—

- (c) the Corporations Law or the Corporations Regulations;
or
- (d) a law of the Commonwealth, whether written or unwritten, or an instrument made or having effect under a written or unwritten law of the Commonwealth.

transaction includes—

- (a) any transaction in the nature of a contract, agreement or other arrangement; and
- (b) any statement, declaration, demand, notice or request, including an offer and the acceptance of an offer, that the parties are required to make or choose to make in connection with the formation or performance of a contract, agreement or other arrangement; and
- (c) any transaction of a non-commercial nature.

Attachment

section 5

