



Electronic Transactions Amendment Regulations 2009 (No.)¹

Select Legislative Instrument 2009 No.

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Electronic Transactions Act 1999*.

Dated 2009

Governor-General

By Her Excellency's Command

[DRAFT ONLY – NOT FOR SIGNATURE]

Attorney-General

DRAFT ONLY

1 Name of Regulations

These Regulations are the *Electronic Transactions Amendment Regulations 2009* (No.).

2 Commencement

These Regulations commence on the same day as the *National Consumer Credit Protection Act 2009* commences.

3 Amendment of *Electronic Transactions Regulations 2000*

Schedule 1 amends the *Electronic Transactions Regulations 2000*.

Schedule 1 Amendments

(regulation 3)

[1] After regulation 2

insert

Part 1 Exemptions

[2] After regulation 7

Insert

Part 2 Electronic communications under the *National Consumer Credit Protection Act 2009*

8 Application

This Part applies to electronic communications under the *National Consumer Credit Protection Act 2009*.

9 Definitions

In this Part:

debtor has the same meaning as in subsection 204 (1) of Schedule 1 to the *National Consumer Credit Protection Act 2009*.

guarantor has the same meaning as in subsection 204 (1) of Schedule 1 to the *National Consumer Credit Protection Act 2009*.

mortgage has the same meaning as in subsection 5 (1) of the *National Consumer Credit Protection Act 2009*.

mortgagor has the same meaning as in subsection 5 (1) of the *National Consumer Credit Protection Act 2009*.

10 Manner of giving notice or other document

- (1) A debtor, mortgagor or guarantor may consent to the giving of documents by electronic communication only after being told that, if written consent is given:
 - (a) paper documents must no longer be given; and
 - (b) electronic communications must be regularly checked for documents; and
 - (c) consent to the giving of documents by electronic communication may be withdrawn at any time.
- (2) A credit provider may, with the written consent of the debtor, mortgagor or guarantor, serve a notice or other document on the debtor, mortgagor or guarantor by:
 - (a) making the notice or other document available for a reasonable period on the credit provider's information system for retrieval by electronic communication by the debtor, mortgagor or guarantor; and
 - (b) promptly notifying the debtor, mortgagor or guarantor by electronic communication that the notice or other document is available for retrieval on that information system and the nature of the notice or other document; and
 - (c) providing the debtor, mortgagor or guarantor with the ability to retrieve the notice or other document by electronic communication.
- (3) A person, other than a debtor, mortgagor or guarantor, may consent to the giving of documents by electronic communication only after being told that if written consent is given:
 - (a) there is no longer a requirement to give paper documents; and
 - (b) electronic communications must be regularly checked for documents; and
 - (c) consent to the giving of documents by electronic communication may be withdrawn at any time.
- (4) If a notice or other document is given by sending it to a nominated electronic address or in a manner described in this regulation:

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- (a) it must be in a format that allows it to be printed and saved to an electronic file; and
 - (b) at the time it was sent or was made available on the credit provider's information system, it was reasonable to expect that the intended recipient would be able to print it and to save it to an electronic file.
- (5) A nomination or consent ceases to have effect when it is cancelled or withdrawn by the person who gave it.

11 Date of notice or other document

A notice or other document that is sent by fax is taken to be given on the later of the following dates:

- (a) the date on the notice or other document;
- (b) the date indicated in a report by the transmitting fax machine that the notice or other document was transmitted to the addressee.

[3] Schedule 1, after item 85

insert

- 86 The following provisions of the *National Consumer Credit Protection (National Credit Code) Regulations 2009*: subsection 8 (1), Division 2 of Part 2 and sections 14 and 15
- (a) paragraph 38 (a);
 - (b) paragraph 38 (c);
 - (c) a provision that provides that duty is only charged on a transaction if the transaction is effected or evidenced by an instrument or document in hard copy form;
 - (d) a provision that provides that duty is only charged on an instrument if the instrument is in hard copy form

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- 86A The following provisions of Schedule 1 to the *National Consumer Credit Protection Act 2009*: Subsection 8 (1), Division 2 of Part 2 and sections 14 and 15
- (a) section 8;
 - (b) paragraph 57 (1) (a);
 - (c) paragraph 57 (1) (b);
 - (d) paragraph 59 (2) (a) ;
 - (e) paragraph 61 (1) (a);
 - (f) paragraph 88 (1) (a);
 - (g) paragraph 88 (2) (a);
 - (h) paragraph 99 (1) (b);
 - (i) subsection 102 (1);
 - (j) paragraph 130 (5) (a)
 - (k) paragraph 130 (6) (a);
 - (l) subsection 178 (1);
 - (m) a provision that provides that duty is only charged on a transaction if the transaction is effected or evidenced by an instrument or document in hard copy form;
 - (n) a provision that provides that duty is only charged on an instrument if the instrument is in hard copy form

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.