

EXPLANATORY STATEMENT

Minute No. _____ of 2009 – Attorney-General

Subject - *Electronic Transactions Act 1999*

Electronic Transactions Amendment Regulations 2009 (No.)

Section 16 of the *Electronic Transactions Act 1999* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The objects of the Act include facilitating the use of electronic transactions and enabling business and the community to use electronic communications in their dealings with the government. The Act generally provides that if a Commonwealth law requires or permits transactions to be in written form that requirement is met if the transaction is made in electronic form.

However, under subsections 8(3) and 8(4) of the Act, certain transactions or certain laws of the Commonwealth may be exempted from the operation of subsection 8(1) of the Act by being specified in regulations. The effect of the exemption is that requirements in those laws for writing, signature and production and retention of documents cannot be met in an electronic form. Under subsections 14(7) and 14(8) of the Act, certain transactions or certain laws of the Commonwealth may be exempted from the operation of section 14 of the Act. The effect of the exemption is that the time and place of dispatch and receipt of the specified electronic transactions is not determined by the Act. The *Electronic Transactions Regulations 2000* (the principal regulations) specify those transactions and laws that are exempt from certain provisions of the Act.

The regulations amend the principal regulations consequential to the *National Consumer Credit Protection Act 2009* (the Credit Protection Act) in which the Commonwealth assumes responsibility for the regulation of consumer credit and financial services from the States and Territories. The regulations replicate the electronic transactions exemptions that were in place under the credit regulation scheme administered by the States and Territories. The regulations also contain additional provisions concerning the manner of giving a notice, and determination of the date of a notice or other document in relation to electronic transactions. These are consistent with the Act, but provide further detail to facilitate the transition of the regulatory framework.

Details of the regulations are provided in Attachment A.

The Act specifies no conditions that need to be satisfied before the power to make the regulations may be exercised.

The regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The regulations commence on the same day as the commencement of the Credit Protection Act.

The regulations form part of a package of amendments relating to the introduction of the Credit Protection Act and as part of a public consultation on the package, the Australian Government sought comments on the draft regulations in August 2009.

Authority: Section 16 of the *Electronic Transactions Act 1999*

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Details of the *Electronic Transactions Amendment Regulations 2009* (No.)

Regulation 1 – Name of Regulations

This regulation provides that the title of the regulations is the *Electronic Transactions Amendment Regulations 2009* (No.).

Regulation 2 – Commencement

This regulation provides that the regulations commence on the same day as the *National Consumer Credit Protection Act 2009* (the Credit Protection Act) commences.

Regulation 3 – Amendment of *Electronic Transactions Regulations 2000*

This regulation provides that Schedule 1 amends the *Electronic Transactions Regulations 2000* (the principal regulations).

Schedule 1 – Amendments

Item [1] – After regulation 2

This item inserts the heading ‘Part 1 Exemptions’. This creates a separate set of provisions in the principal regulations which are applicable to electronic transactions undertaken pursuant to the Credit Protection Act only.

Item [2] – After regulation 7

This item inserts a new Part 2 which contains four new regulations.

Regulation 8 is an application provision to provide that the Part is applicable to electronic transactions undertaken pursuant to the Credit Protection Act.

Regulation 9 inserts definitions of relevant terms. The regulation provides that the words ‘debtor’, ‘guarantor’, ‘mortgage’, and ‘mortgagor’ have the same meaning as defined in the Credit Protection Act.

Regulation 10 provides for the process to obtain consent to receiving a notice or other document by electronic communication. This process outlines some additional obligations to ensure that informed consent has been obtained.

Regulation 11 provides a method of determining the date of a notice or other document sent by fax. Although the ETA includes fax transactions as an ‘electronic communication’, this provision specifically provides for fax transactions.

Item [3] – Schedule 1, after item 85

This item inserts items 86 and 86A into Schedule 1 to list the transactions under the *National Consumer Credit Protection (National Credit Code) Regulations 2009* and the Credit Protection Act which will be exempt from the ETA. These exemptions replicate the same transactions which were exempt from electronic transactions legislation under the credit regulation scheme administered by the States and Territories. These include documents such as guarantees, credit contracts, notices of change in the credit contract terms, default notices, notices of repossession, and written demands for satisfaction of a judgement.

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