



Positioning Australia as a leader in digital economy regulation - Consultation on the Electronic Transactions Act

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Background and purpose of this consultation

How the ETA regulates e-commerce in Australia

When you sign a contract using an electronic signature, click ‘I accept’ on online T&Cs, or send an important document by email – how can you be sure that what you are doing is legally valid?

The *Electronic Transactions Act 1999* (Cth) (**ETA**) is an Australian law which lets valid electronic transactions take place. Simply put – it says that any legal requirement to sign, send or record written

information or documents, can generally be done using electronic tools, so long as certain steps are taken to ensure validity, authenticity and access.

This gives Australians greater certainty to communicate and do business electronically – while also protecting consumers from unjust outcomes.

A background to this consultation

In 2021, the Deregulation Taskforce published the [Modernising Document Execution \(MDE\) consultation paper](#), which focused on execution requirements for special documents like deeds and statutory declarations.

Through that process, respondents also identified issues with the ETA, such as:

- uncertainty around the ETA 'consent' requirements
- inconsistency between Commonwealth, state and territory laws
- difficulties with understanding the way government agencies can 'exempt' the ETA
- how they could verify electronic signatures and keep electronic records.

The ETA is an important feature of the growing digital economy and, as an Act of general application, interacts closely with other laws – so it is important that people are aware of how it operates and that the government is aware of any concerns in relation to its use.

As such, the government is seeking public views on the ETA and how it operates in practice.

Why we are consulting

This consultation is designed to start an ongoing discussion on the ETA, including any challenges with its application or any confusion experienced by those interacting in the digital economy. Views collected from the community will help us prepare practical resources that will support the effective implementation of the ETA, improve understanding of the ETA legal framework, and provide guidance on how digital best practice can be applied. Feedback received will be taken into consideration in any future reform process.

Who we want to hear from

The government wants to hear the views of a broad range of stakeholders – including members of the public, commercial and legal groups, consumer advocates, business and tech organisations and government law designers.

Please note that you do not have to answer all of the questions in this consultation process. The only mandatory questions relate to your contact details and, on the last page, whether you consent to make your submissions public.

Questions for respondents:

1. Please provide a contact email address.

- 2. Who are you making this submission for?**
 - A. An organisation – like a company, business, group, network or body
 - B. For myself.

- 3. What industry do you (or your organisation) operate in?**
 - A. Technology
 - B. Legal
 - C. Government
 - D. Consumer Advocacy
 - E. Business
 - F. Academic
 - G. Other (please specify)

- 4. What is the name of your organisation (if applicable)?**

- 5. What is your organisation's URL (if applicable)?**

- 6. In what State or Territory are you based?**

The Electronic Transactions Act

Every day, there are hundreds of situations where you might need to enter an agreement, send or receive written documents or information, or store a written record.

For example:

- a government department might require you to send them written information for an important application
- an industry law might require you to store receipts or payment information for 5 or more years
- you might need to sign a contract before receiving goods or services.

Over the past several decades, people have found that these types of ‘transactions’ can be efficiently executed using electronic tools – like email, computer storage, or e-signing platforms.

Until 1999, it wasn’t clear in Australian law whether electronic transactions were as legally valid as paper transactions. The *Electronic Transactions Act 1999* (Cth) (ETA) was enacted to make clear in law that electronic transactions are legally valid when used to comply with Commonwealth laws – so long as certain technical requirements are met. There are some transactions (like signing a cheque) that cannot be created electronically. Where these transactions are identified, they are excluded from the ETA’s application.

Australian states and territories have also enacted their own electronic transactions regulatory frameworks – which provide duplicate provisions to the ETA that apply to transactions under state and territory laws (please see Annexures A and B).

This national framework gives the community an option to use electronic tools when dealing with government agencies or when transacting privately, and sets the standards needed for current and future technologies.

Consent Requirements

Background

Not all people have equal access to electronic transaction tools like email or internet software, or are comfortable using them day-to-day. The ETA gives people the choice about whether to use electronic communications in their transactions.

The ETA's 'consent' requirements say that (generally):

- senders and users of electronic information and signatures must make sure the other party has given 'consent' for use of the electronic tool. Without consent, the transaction might not be valid.
- consent doesn't need to be in any particular form. It is possible for consent to be implied from the circumstances of the parties' prior communication.

For example, a customer might agree to receive their telephone bills by email, instead of by post. This customer's "consent" might be clearly expressed through a written agreement; but it could also have been indicated by a history of previous emails with the telephone provider.

As a general rule, Commonwealth entities must always accept electronic communications. These entities may, however, require that specific technology tools are used when communicating with them – for example, an online communication platform like MyGov.

Issue

A number of groups have expressed concern and confusion about the ETA consent provisions, including about when consent is required, how it could be affecting smooth digital communications, and how to collect consent and be confident that their transaction is valid.

Consent is not a requirement for paper-based transactions. We have heard from some stakeholders that the consent requirements make paper transactions more attractive and secure than electronic transactions. This may contribute to higher uncertainty and hesitancy to use e-commerce.

It was suggested that this uncertainty might also lead to negative consumer outcomes, for example by preventing consumers and small businesses from benefitting from Australian e-commerce efficiencies.

Inconsistencies across laws may also be causing confusion, such as where other legislation may limit the operation of the consent provision. The government would like to clarify any uncertainty as much as possible – and wants to start by understanding how consent is collected and managed in practice. This includes how the consent provisions might be:

- causing unnecessary uncertainty
- creating a barrier to engagement in Australian e-commerce
- protecting vulnerable persons
- protecting against adverse consumer outcomes.

Consent – Questions

- 1. The standard ETA process gives people the right to withhold their consent for electronic communications.**

As a consumer, have you ever experienced any of the following issues relating to giving your consent (you may select more than one)?

- A. I have wanted to use paper transactions (and didn't give my consent) – but the other party used electronic tools anyway.
 - B. I have felt pressure to consent to use electronic tools, when I didn't really want to.
 - C. A government department didn't ask my consent before transacting electronically with me.
 - D. This hasn't been an issue for me, because I would generally prefer to use electronic tools over paper-based transactions if available.
 - E. This hasn't been an issue for me, because I've never thought about my right to give or withhold consent.
 - F. Other: please describe.
- 2. Please give us some further background details about your answer/s above, e.g. what happened as a result of the issue/s, or why did you feel this way? Please use examples where possible, and let us know which issue/s you're talking about.**
 - 3. The standard ETA process requires people to confirm consent from people before communicating or signing documents electronically.**

In operating your business, have you ever experienced any of the following issues relating to getting consent from others (you can select more than one)?

- A. I have wanted to communicate electronically with a government department, but they didn't consent so I needed to use paper methods.
- B. Someone didn't consent to transact electronically, and this led to delays / postage costs / other issues.
- C. Someone didn't consent to transact electronically, but they didn't have any good reason for doing so.
- D. I wasn't sure at what point I needed to collect consent from the other person.
- E. I couldn't think of an appropriate way to collect consent.
- F. It wasn't clear whether the other person had consented or not.
- G. This hasn't been an issue for me – I've always been sure that other people consent for me to transact electronically.
- H. This hasn't been an issue for me – I've never thought about the need to collect consent.
- I. Other.

- 4. Please expand by providing further background details about your answer/s above, e.g. what happened as a result of the issue/s, or why did you feel this way? Please use examples where possible.**
- 5. What methods do you think are appropriate to make sure a person can access, and is comfortable with, electronic communication and signature tools? You can choose more than one (e.g. if your answer depends on the transaction type)**
 - A. There should be clear consent for every type of e-transaction.
 - B. There should be clear consent from each person I transact with.
 - C. People should use 'consent form' or something similar to confirm consent
 - D. If you have communicated electronically without complaint in the past, this should demonstrate consent.
 - E. If you provide an email or accept an e-signing link, this should demonstrate consent.
 - F. These days, it should be fair to assume that everyone is fine with electronic communications (unless they say otherwise).
 - G. I've never really thought about e-commerce consent.
 - H. Other
- 6. Please expand on your selections above.**
- 7. What methods do you use to ensure a person can access, and is comfortable with, electronic communication and signature tools? (i.e. If you regularly send information/documents to other parties, or engage in e-signing).**
- 8. The requirement to collect consent makes it difficult to conduct electronic commerce in Australia.**
 - A. Strongly agree
 - B. Agree
 - C. Neither agree nor disagree
 - D. Disagree
 - E. Strongly disagree.
- 9. Please expand on your selection.**
- 10. The consent requirement protects vulnerable people from unjust outcomes.**
 - A. Strongly agree
 - B. Agree
 - C. Neither agree nor disagree
 - D. Disagree
 - E. Strongly disagree.

11. Consent is an important aspect of transacting electronically.

- A. Strongly agree
- B. Agree
- C. Neither agree nor disagree
- D. Disagree
- E. Strongly disagree.

12. Please expand on your selections.

13. Is there anything further you would like to raise with the government about the ETA consent provisions?

Signatures

Background

Adding your signature to a document used to be something only possible with pen and paper. There are now many options to use electronic or online signing tools – from document editing programs to online signing platforms.

The ETA confirms that legally binding, electronic signatures may be provided to meet Commonwealth law requirements, so long as the signatures meet certain standards. For example, the recipient of the signed document must consent to receive the electronic signature.

However, the ETA also requires electronic signatures to meet the standards of identification and proof set out in section 10(1)(a). Specifically, an electronic signature must always incorporate a method to identify the signer, and indicate their intention.

The ETA does not give any details about what methods should be used to verify the identity of the signer. Instead, the person requesting the signature may choose the method based on what they think is appropriate and reliable. For example, depending on the parties' needs, signers can choose electronic signature tools which incorporate multi-factor-authentication, password protection, blockchain validation, or any other methods.

Government entities can set technology requirements for use of electronic signatures for their processes. They can also make different laws that restrict the use of electronic signatures in some situations – e.g. for court documents, which often need to be signed by hand.

Issue

Some commercial groups have suggested they are hesitant to update all of their signing policies, noting a general confusion or concern around whether electronic signatures ensure the legal validity of high-risk or high-stakes transactions. For example, some people described a continued hesitancy to use e-signing among some legal practitioners, even after the enactment of temporary measures during the COVID-19 pandemic which expanded the ability to execute documents electronically.

The ETA does not replace or phase out the use of wet-ink signatures or other paper-based practices generally. It is important that the form of the transaction (wet-ink or digital) should be based on consumer preference (or legitimate legal barriers) rather than on confusion or concern about the application or legal validity of transactions undertaken in reliance of the ETA.

The government is therefore interested in understanding public views on the use of electronic signatures, including to identify unnecessary barriers preventing the adoption of electronic signatures. This will help improve understanding about how digital practices can be applied with confidence.

Signatures – Questions

1. **When signing a document or entering a contract, do you (or your organisation) use electronic signatures as your most-preferred option?**
 - A. Yes
 - B. No
 - C. It depends
2. **Please expand on your response.**
3. **Do you think that it is difficult to determine whether an electronic signature will be valid for any given document?**
 - A. Yes
 - B. No
4. **Please expand on your response.**
5. **What verification or identity methods do you think appropriate for the electronic signature tools you use?**
6. **How might this change based on what document you are signing?**

Exemptions and inconsistencies

Background

The ETA provides that any Commonwealth law requirement to sign, send or record written information or documents can generally be done using electronic tools. However, it also sets a framework for exempting the ETA from certain legislation.

Exemptions can be done in 2 ways: either through specific reference in the *Electronic Transactions Regulations 2020 (ETR)*, or through the enactment of different electronic rules and laws in portfolio-specific legislation.

For example, “exemptions” to the ETA can:

- keep paper-based requirements for certain documents – like under the *Australian Passports Act 2005 (Cth)*
- change the need for a Commonwealth entity to collect consent – like in section 228 of the *Online Safety Act 2021 (Cth)*
- confirm special rules for types of situations or processes – like in section 7A(1) of the ETA, which exempts much of the ETA from court or tribunal rules.

In addition, some industries operate under detailed legal frameworks which exempt all the ETA. For example, companies which operate under the *Corporations Act 2001 (Cth)* are subject to signature, communication or notice provisions which are often very different to those under the ETA.

State and territory electronic transaction acts may also contain different exemptions.

Issue

Many stakeholders raised concerns about inconsistencies between e-commerce legislation, including exemptions found in the ETR, and other provisions which exempt the ETA.

In particular, stakeholders consistently discussed:

- a desire to continue removing barriers to electronic communications
- an interest in a more consistent e-commerce approach
- that the patchwork of differently placed exemptions is causing unnecessary confusion among consumers

The government is interested in collecting wider views from stakeholders to understand how users navigate Commonwealth ETA exemptions, and specific issues experienced by particular industries and groups. This information will help inform the preparation of further guidance materials.

Exemptions – Questions

1. **Generally, the ETA allows paper-commerce to take place electronically. However, other legislation or the ETR can override these provisions and affect the validity of e-commerce options.**

With that in mind – have you ever needed to search to see whether an e-commerce activity was affected by specific legislation or regulations?

- A. Yes
- B. No

2. **If you answered ‘yes’ – how did you conduct this search? (you can choose more than one)**

- A. By reviewing the legislation directly.
- B. By reviewing the ETR.
- C. Elsewhere online, like on a government or consumer website.
- D. By seeking professional advice.
- E. On physical materials, like pamphlets or books.
- F. I have never needed to search for an ETA exemption.
- G. I did not know about the existence of ETA exemptions until now.

3. **If you answered ‘yes’ – how did you find the search process?**

- A. Very Easy
- B. Easy
- C. Neither easy nor difficult
- D. Difficult
- E. Very difficult

4. **If you found it difficult or complicated, why?**

5. **What do you think would make the process easier?**

6. **Which exemption/s did you find affecting your e-commerce activity? How did this effect you?**

Record-keeping

Background

Commonwealth laws will often require people to keep records of written information or documents for a period of time. This used to be achieved using paper filing systems only – there are now a number of electronic tools that can be used to store this kind of information.

The ETA allows people and businesses to retain information, communications and documents in electronic form as an alternative to keeping physical records, provided certain standards are met. For example, under section 12(1)(a), a record-keeper must reasonably expect that their electronic record will be in an accessible and usable format whenever it is required in future. For example, this could be satisfied by keeping records as a PDF stored on a hard drive or cloud-based storage system.

Electronic record-keeping requirements may also be subject to exemption, for example there are existing exemptions where court and tribunal rules require paper records (see section 7A of the ETA).

Issue

Some stakeholders described a general lack of public confidence in the electronic record-keeping option under the ETA and a reluctance to move away from the practice of keeping hard copy documents. This was sometimes due to nervousness about whether electronic documents will be valid evidence if required in a court case, where paper copies of the same documents were also available. This may also have been a hangover from the common law ‘best evidence rule’ which provided that the contents of a tendered document in court could only be proved by tendering the original.

Prior to the 1995 reforms to evidence laws, the ‘best evidence rule’ and its possible effect on paper and electronic evidence had been the source of some confusion in litigation. To provide more certainty about the validity of electronic evidence, the rule was clarified in section 51 of the *Evidence Act 1995* (Cth) which abolished the common law principles and rules relating to the means of proving the contents of documents.

The government is interested in hearing views and practices regarding electronic record-keeping – including whether there are barriers to electronic record-keeping, and how the government can encourage a greater adoption of electronic record-keeping, where available.

Record Keeping – Questions

1. **Do you or your organisation save important records (including communications and documents) electronically or physically?**
 - A. Electronically (like on the desktop, on the cloud, or on file management programs)
 - B. Physical paper records
 - C. We record documents in both electronic and physical form
 - D. It depends on the record or document.

- 2. Please expand on your response.**
- 3. Do you think that it is difficult to determine whether a record is allowed to be kept in electronic form?**
 - A. Yes
 - B. No
- 4. Please expand on your response.**
- 5. Is there any further feedback you or your organisation would like to provide on record-keeping under the ETA?**

Next steps

Thank you for your consideration of the issues set out in this consultation.

The government will review and collate the concerns and insights raised over the consultation period and use these to prepare practical and user-focused ETA guidance resources. These resources will be developed with an aim to improve confidence in the ETA, increase e-commerce adoption, and help consumers navigate the Australian electronic transactions framework.

The government welcomes any further comments regarding the ETA, Australia's electronic transactions framework, or the shape of future work and guidance materials, including:

- the extent to which you consider the ETA fit for purpose
- the extent to which you think the ETA is still usable in the context of new and emerging e-commerce technologies
- the nature, form or style of future ETA guidance materials.

Future Work – Questions

1. **The government will look to publish resources which encourage greater use of e-commerce in accordance with the ETA. What information or content do you think would best help users navigate the legal requirements of Australia's e-commerce framework?**
2. **Do you have any suggestions about the form or style of this information?**
3. **Do you consent to make your submission public? (mandatory)**

Note: your submission may be made public unless you request it not be made public or the Attorney-General's Department considers it should not be made public. That will usually only occur for reasons associated with fairness. Submissions that are made public may include redactions made as the Attorney-General's Department considers appropriate.

- A. I agree to my submission being made public under my name
 - B. I agree to my submission being made public anonymously
 - C. I do not want my submission to be made public
4. **Finally, we would welcome any further comments, concerns or observations regarding the ETA or Australian e-commerce legislation – including anything not covered in this consultation process. You can do this by contacting us directly at eta@ag.gov.au.**

Annexure A – Electronic Transactions Acts and Regulations

	Act	Regulations
CTH	<i>Electronic Transactions Act 1999 (Cth)</i>	<i>Electronic Transactions Act Regulations 2020 (Cth)</i>
ACT	<i>Electronic Transactions Act 2001 (ACT)</i>	
NSW	<i>Electronic Transactions Act 2000 (NSW)</i>	<i>Electronic Transactions (ECM Courts) Order 2005 (NSW)</i> <i>Electronic Transactions Regulations 2017 (NSW)</i>
NT	<i>Electronic Transactions (Northern Territory) Act 2000 (NT)</i>	<i>Electronic Transactions (Northern Territory) Regulations 2001 (NT)</i>
QLD	<i>Electronic Transactions (Queensland) Act 2001 (QLD)</i>	
SA	<i>Electronic Transactions Act 2000 (SA)</i>	<i>Electronic Transactions Regulations 2017 (SA)</i>
TAS	<i>Electronic Transactions Act 2000 (TAS)</i>	<i>Electronic Transactions Regulations 2021 (TAS)</i>
VIC	<i>Electronic Transactions (Victoria) Act 2000 (VIC)</i>	<i>Electronic Transactions Regulations 2020 (VIC)</i>
WA	<i>Electronic Transactions Act 2011 (WA)</i>	<i>Electronic Transactions Regulations 2012 (WA)</i>

Annexure B – Comparative Table of Provisions

Jurisdiction	CTH	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Short Title	1	1	1	1	1	1	1		1
Commencement	2		2	2	2	2	2	2	2
Object	3	3	3	3	3	3		1,4	3
Simplified Outline	4	4	4	4	4,5, Sch 2	4		5	4
Definitions: “Consent”	5	5	5	5	6	5	3	3	5
Crown to be bound	6		6	6	7	6	4	6	6
External Territories	7								
Exemptions	7A	6A	6A	6A	7A	7	4A	6A	7
Broad Court Exemption	7B				7A Sch 1		10A		
Specific Court Processes			Sch 1						
Validity of electronic transactions	8	7	7	7	8	8	5	7	8
Writing	9	8	8	8	9,10, 11,12 ,13	9	6	8	9
Signature	10	9	9	9	14,15	10	7	9	10
Production of document	11	19	10	10	16,18	11	8	10	11

Jurisdiction	CTH	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Retention of information and documents	12	11	11	11	19,20 ,21	12	9	11	12
Witnessing			14F					12	
Deeds								12A	
Mortgages								12B, 17	
Time of dispatch	14	13	13	13	23	13	11	13	13
Time of receipt	14A	13A	13A	13A	24	13A	11A	13A	14
Place of dispatch and receipt	14B	13B	13B	13B	25	13B	11B	13B	15
Attribution of electronic communications	15	14	14	14	26	14	12	14	16
Additional provisions applying to contracts involving electronic communications	15A	14A	14A	14A	26A	14A	12A	14A	17
	15B	14B	14B	14B	26B	14B	12B	14B	18
	15C	14C	14C	14C	26C	14C	12C	14C	19
	15D	14D	14D	14D	26D	14D	12D	14D	20
	15E	14E	14E	14E	26E	14E	12E	14E	21
Migration Exemption	Sch 1								
Acts Amended									25, 26
Regulations	16		15	15	27	15	13	15	22