

NORTHERN TERRITORY OF AUSTRALIA

ELECTRONIC TRANSACTIONS (NORTHERN TERRITORY) AMENDMENT
ACT 2011

Act No. 12 of 2011

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 12 of 2011

An Act to amend the *Electronic Transactions (Northern Territory) Act 2000*

[Assented to 18 April 2011]
[Second reading 23 February 2011]

The Legislative Assembly of the Northern Territory enacts as follows:

1 Short title

This Act may be cited as the *Electronic Transactions (Northern Territory) Amendment Act 2011*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

3 Act amended

This Act amends the *Electronic Transactions (Northern Territory) Act 2000*.

4 Section 4 amended

(1) Section 4

omit

The

insert

(1) The

(2) After section 4(1)

insert

(2) This Act also 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(c) a portion of an electronic communication containing an input error can be withdrawn in certain circumstances;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 Part 2 to the extent they do not apply of their own force.

5 Section 5 amended

(1) Section 5

omit

, unless the contrary intention appears

(2) Section 5, definitions ***place of business*** and ***transaction***

omit

(3) Section 5

insert (in alphabetical order)

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 with respect to 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.

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 with respect to 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 mentioned 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.

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.
- (4) Section 5, definition ***data***

omit

all words after "program"

insert

as defined in section 10(1) of the *Copyright Act 1968* (Cth).

6 Section 6A inserted

After section 6, in Part 1

insert

6A Exemptions

- (1) A regulation may provide that all or specified provisions of this Act do not apply:
- (a) to specified transactions, requirements, permissions, electronic communications or other matters; or
 - (b) to specified classes of matters mentioned in paragraph (a); or
 - (c) in specified circumstances or specified classes of circumstances.
- (2) A regulation may provide that all or specified provisions of this Act do not apply to specified laws of the Territory.

7 Section 7 amended

Section 7(3) and (4)

omit

8 Section 9 amended

- (1) Section 9(1)(a) and (b)

omit, insert

- (a) a method is used to identify the person and to indicate the person's intention in respect of the information communicated; and
- (b) the method used was:
 - (i) 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; or
 - (ii) proven in fact to have fulfilled the functions described in paragraph (a), by itself or together with further evidence; and

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- (2) Section 9(1)(c)
omit
referred to
insert
mentioned
- (3) Section 9(2)(a), at the end
insert
or
- (4) Section 9(2)(c)
omit
approval
insert
intention in respect
- (5) After section 9(2)
insert
- (3) 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.
- 9 Section 12 repealed**
Section 12
repeal
- 10 Section 13 replaced**
Section 13
repeal, insert
- 13 Time of dispatch**
(1) For the purposes of a law of the Territory, 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 when the electronic communication is received by the addressee.

Note for paragraph (b)

Paragraph (b) would apply to a case where the parties exchange electronic communications through the same information system.

- (2) Subsection (1) applies even though the place where the information system supporting an electronic address is located may be different from the place where the electronic communication is taken to have been dispatched under section 13B.

13A Time of receipt

- (1) For the purposes of a law of the Territory, 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 when 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 where the information system supporting an electronic address is located may be different from the place where the electronic communication is taken to have been received under section 13B.

13B Place of dispatch and place of receipt

- (1) For the purposes of a law of the Territory, 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 where the originator has its place of business; and
 - (b) the electronic communication is taken to have been received at the place where 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 that party, unless another party demonstrates that 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 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 that 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 that the party's place of business is the place of the party's habitual residence.
- (3) A location is not a party's place of business merely because it is where:
 - (a) equipment and technology supporting an information system used by the party are located; or
 - (b) the information system may be accessed by other parties.

-
- (4) The sole fact that a party makes use of a domain name or electronic address connected to a specific country does not create a presumption that its place of business is located in that country.

11 Section 14 amended

Section 14(3) and (4)

omit

12 Part 2A inserted

After section 14

insert

Part 2A Additional provisions applying to contracts involving electronic communications

14A Application of 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) the law of the Territory, and so applies:

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

14B Invitation to treat regarding contracts

- (1) This section applies to a proposal to form a contract that:
 - (a) is made through one or more electronic communications; and
 - (b) is not addressed to one or more specific parties; and
 - (c) is generally accessible to parties making use of information systems.
- (2) The proposal 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.
- (3) Subsection (2) extends to proposals that make use of interactive applications for the placement of orders through information systems.

14C Use of automated message systems for contract formation – non-intervention of individual

- (1) This section applies to a contract formed by:
 - (a) the interaction of an automated message system and an individual; or
 - (b) the interaction of automated message systems.
- (2) The contract 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.

14D Error in electronic communications 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 individual with an opportunity to correct the error;

the individual, or the party on whose behalf the individual was acting, has the right to withdraw the portion of the electronic communication in which the input error was made.
- (3) However, the right of withdrawal of a portion of the electronic communication can be exercised only if:
 - (a) the individual, or the party on whose behalf the individual was acting, notifies the other party of the error as soon as possible after having learned of the error and indicates that he or she made an error in the electronic communication; and
 - (b) the individual, or the party on whose behalf the individual was acting, has not used or received any material benefit or value from the goods or services, if any, received from the other party.
- (4) The right of withdrawal of a portion of the electronic communication is not of itself a right to rescind or otherwise terminate a contract.

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- (5) Any consequences of the exercise of the right of withdrawal of a portion of the electronic communication are to be determined in accordance with any applicable rule of law.

Note for section 14D

In some circumstances the withdrawal of a portion of an electronic communication may invalidate the entire communication or render it ineffective for the purposes of contract formation (see paragraph 241 of the UNCITRAL explanatory note for the United Nations Convention on the Use of Electronic Communications in International Contracts).

14E Application of Act in relation to contracts

- (1) Subject to subsection (2), sections 7 and 13 to 13B apply to the following in the same way as they apply to a transaction or electronic communication mentioned in those sections, and apply as if the words "For the purposes of a law of the Territory" were omitted:
- (a) a transaction constituted by or relating to a contract;
 - (b) an electronic communication relating to the formation or performance of a contract.
- (2) However, this Part (including subsection (1)) does not apply in relation to a contract to the extent that:
- (a) Part 2 would of its own force have the same effect as this Part if this Part applied; or
 - (b) a law of another State or Territory (that is in substantially the same terms as Part 2) would of its own force have the same effect as this Part if this Part applied.

Note for section 14E

This section applies provisions of Part 2 to contracts or proposed contracts to the extent that those provisions do not apply merely because they are expressed to apply in relation to a law of the Territory. This section also disapplies the provisions of Part 2A to the extent that Part 2 would apply of its own force. An example where Part 2 may not apply of its own force is where a contract is being negotiated in a State or Territory from a supplier located overseas.

13 Section 15 replaced

Section 15

repeal, insert

15 Regulations

The Administrator may make regulations under this Act.

14 Part 4 inserted

After section 15

insert

Part 4 Transitional matters

16 Transitional matters for *Electronic Transactions (Northern Territory) Amendment Act 2011*

- (1) Regulations made under this Act before the commencement of section 6A and in force immediately before that commencement have effect as if that section had been in force when they were made.
- (2) Subject to subsection (3):
 - (a) section 14B extends to proposals made before the commencement date; and
 - (b) section 14C extends to actions carried out before the commencement date; and
 - (c) section 14D extends to statements, declarations, demands, notices or requests, including offers and the acceptance of offers, made or given before the commencement date.
- (3) Subsection (2) and Part 2A do not apply in relation to contracts formed before the commencement date.
- (4) In this section:

commencement date means the date of commencement of Part 2A.

15 Act further amended

The Schedule has effect.

Schedule Act further amended

section 15

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
Part 1, heading, at the end		matters
section 3(a) and (b), at the end		and
Part 2, Divisions 1 and 2, heading	laws of the Territory	Territory laws
section 8(5)	the purposes of	
section 10(1)(a) and (2)(a), at the end		and
section 10(3)	the purposes of	
section 10(3)(b)	change,	change;
section 11(2)(a), at the end		and
section 11(3)	the purposes of	
section 11(3)(b)	change,	change;
section 11(4)(a), (b) and (c)(iv), at the end		and
section 11(4)(d)	referred to	mentioned
section 11(5)	the purposes of	
section 11(5)(b)	change,	change;
Part 2, Division 3, heading	laws of the Territory	Territory laws
Part 3, heading, at the end		matters
