



**Australian Government**  

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**Attorney-General's Department**  
  
**Civil Law Division**

**The *Electronic Transactions Act 1999***

The existing legal system is generally capable of dealing with electronic transactions. However the uniform electronic transactions legislation of the Commonwealth, states and territories provides certainty for electronic transactions and allows electronic commerce to operate on the same basis as paper based commerce.

**Can I deal with the Australian Government electronically?**

Yes. The Electronic Transactions Act means that where you are required or permitted under a Commonwealth law to:

- give information in writing
  - provide a signature
  - produce a document in material form
- or
- retain information

then you can do so electronically. However, there are some conditions. An Australian Government department or agency can specify the IT procedures you need to follow (for example, which email address to send the information to and in what format) or ask that you take certain action to verify receipt of your information (for example, you may have to request a 'return receipt' when transmitting the information).

**Can the Australian Government send information to me electronically?**

Yes, but it must first obtain your consent to deal with you electronically. This does not mean that your express consent is required. Consent can be reasonably inferred from a person's conduct – for example, if a person has previously used e-mail to communicate with an Australian Government agency or has provided an e-mail address on a personal details form.

**Are there exemptions to this?**

Yes. The Commonwealth, states and territories have exempted or partially exempted many pieces of legislation from the operation of the Electronic Transactions Act. The list of exempt Commonwealth legislation is in Schedule 1 of the [Electronic Transactions Regulations 2000](#).

The Commonwealth Act also exempts the practice and procedures of a court or tribunal. The complementary state and territory legislation often exempts activities such as signing of wills or witnessing a document.

**What about electronic signatures?**

The Electronic Transactions Act allows a person to satisfy a legal requirement for a manual signature by using an electronic communication. The method used must identify the person and indicate their approval of the information communicated. The Electronic Transactions Act is 'technologically neutral' so it does not set out a particular electronic signature technology to be used, providing flexibility for people and businesses to determine the

signature technology that is appropriate to their particular needs. However, the choice of a particular method must be as 'reliable as appropriate in the circumstances'. Electronic signatures range from a digitised version of a written signature to a PIN or biometric technology.

**Is this different from digital signatures?**

Yes. 'Digital signatures' refers to Public Key Infrastructure (PKI) technology. A digital signature is a cryptographic technique that encrypts a hash or digest of a document with a user's private key. This creates a unique and un-forgable identifier that can be checked by the receiver to verify authenticity and integrity and provide for non-repudiation.

The Australian Government Information Management Office (AGIMO) has published the Australian Government Authentication Framework (AGAF) to help identify suitable types of electronic authentication for transactions involving government agencies. AGIMO has also published 'Gatekeeper' which is a strategy for the use of PKI in the delivery of online government services, where appropriate.

**Is a faxed message an electronic communication for the purposes of the Act?**

Yes, it falls within the definition of 'electronic communication' because it is a message sent over phone lines as information. Usually the recipient receives the message through their fax machine in paper form but it can just as easily be received by a computer as an electronic document if the computer is attached to a fax modem. Alternatively, a computer can be used to send a fax to another computer. There will be no paper involved until either the sender or the recipient prints out the fax.

**What is a 'law of the Commonwealth' for the purposes of the Electronic Transactions Act?**

A 'law of the Commonwealth', as it is used in the Electronic Transactions Act on and from 1 July 2001, refers to laws made by or under the authority of the Australian Government Parliament. Laws of the Commonwealth are not limited to Acts of Parliament. In some cases, subordinate legislation - regulations, rules and other instruments - operate together with the Act under which they are made to constitute a law. Subordinate legislation will be a 'law of the Commonwealth' if it constitutes a rule which must be complied with and which creates rights, obligations and liabilities.

It is unlikely that, in the context of the Electronic Transactions Act, a law of the Commonwealth extends to include the common law.