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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Electronic Transactions Bill 1999

No. , 1999

(Attorney-General)

**A Bill for an Act to facilitate electronic
transactions, and for other purposes**

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1 **A Bill for an Act to facilitate electronic**
2 **transactions, and for other purposes**

3 The Parliament of Australia enacts:

4 **Part 1—Introduction**
5

6 **1 Short title**

7 This Act may be cited as the *Electronic Transactions Act 1999*.

8 **2 Commencement**

9 (1) Subject to subsection (2), this Act commences on a day to be fixed
10 by Proclamation.

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- 1 (2) If this Act does not commence under subsection (1) within the
2 period of 6 months beginning on the day on which this Act
3 receives the Royal Assent, it commences on the first day after the
4 end of that period.

5 **3 Object**

- 6 The object of this Act is to provide a regulatory framework that:
7 (a) recognises the importance of the information economy to the
8 future economic and social prosperity of Australia; and
9 (b) facilitates the use of electronic transactions; and
10 (c) promotes business and community confidence in the use of
11 electronic transactions; and
12 (d) enables business and the community to use electronic
13 communications in their dealings with government.

14 **4 Simplified outline**

15 The following is a simplified outline of this Act:

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| <p>16 • For the purposes of a law of the Commonwealth, a transaction
17 is not invalid because it took place by means of one or more
18 electronic communications.</p> <p>19 • The following requirements imposed under a law of the
20 Commonwealth can be met in electronic form:</p> <p>21 (a) a requirement to give information in writing;</p> <p>22 (b) a requirement to provide a signature;</p> <p>23 (c) a requirement to produce a document;</p> <p>24 (d) a requirement to record information;</p> <p>25 (e) a requirement to retain a document.</p> |
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| <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> | <ul style="list-style-type: none"> • For the purposes of a law of the Commonwealth, provision is made for determining the time and place of the dispatch and receipt of an electronic communication.
 • The purported originator of an electronic communication is bound by it for the purposes of a law of the Commonwealth only if the communication was sent by the purported originator or with the authority of the purported originator. |
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8 **5 Definitions**

9 (1) In this Act, unless the contrary intention appears:

10 ***Commonwealth entity*** means:

- 11 (a) a Minister; or
- 12 (b) an officer or employee of the Commonwealth; or
- 13 (c) a person who holds or performs the duties of an office under a law of the Commonwealth; or
- 14 (d) an authority of the Commonwealth; or
- 15 (e) an employee of an authority of the Commonwealth.

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17 ***consent*** includes consent that can reasonably be inferred from the conduct of the person concerned.

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19 ***data*** includes the whole or part of a computer program within the meaning of the *Copyright Act 1968*.

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21 ***data storage device*** means any article or material (for example, a disk) from which information is capable of being reproduced, with or without the aid of any other article or device.

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24 ***electronic communication*** means:

- 25 (a) a communication of information in the form of data, text or images by means of guided and/or unguided electromagnetic energy; or
- 26 (b) a communication of information in the form of speech by means of guided and/or unguided electromagnetic energy,
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Section 6

1 where the speech is processed at its destination by an
2 automated voice recognition system.

3 *information* means information in the form of data, text, images or
4 speech.

5 *information system* means a system for generating, sending,
6 receiving, storing or otherwise processing electronic
7 communications.

8 *information technology requirements* includes software
9 requirements.

10 *non-profit body* means a body that is not carried on for the
11 purposes of profit or gain to its individual members and is, by the
12 terms of the body's constitution, prohibited from making any
13 distribution, whether in money, property or otherwise, to its
14 members.

15 *place of business*, in relation to a government, an authority of a
16 government or a non-profit body, means a place where any
17 operations or activities are carried out by that government,
18 authority or body.

19 *transaction* includes a transaction of a non-commercial nature.

20 (2) Before 1 July 2001, in this Act (other than this section):

21 *law of the Commonwealth* means a law of the Commonwealth
22 specified in the regulations.

23 **6 Crown to be bound**

24 This Act binds the Crown in all its capacities.

25 **7 External Territories**

26 This Act extends to all the external Territories.

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**Part 2—Application of legal requirements to
electronic communications**

**Division 1—General rule about validity of transactions for
the purposes of laws of the Commonwealth**

8 Validity of electronic transactions

- (1) For the purposes of a law of the Commonwealth, a transaction is not invalid because it took place wholly or partly by means of one or more electronic communications.
 - (2) The general rule in subsection (1) does not apply in relation to the validity of a transaction to the extent to which another, more specific provision of this Part deals with the validity of the transaction.
- Exemptions*
- (3) The regulations may provide that subsection (1) does not apply to a specified transaction.
 - (4) The regulations may provide that subsection (1) does not apply to a specified law of the Commonwealth.

Section 9

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2 **Division 2—Requirements under laws of the**
3 **Commonwealth**

4 **9 Writing**

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Requirement to give information in writing

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(1) If, under a law of the Commonwealth, a person is required to give information in writing, that requirement is taken to have been met if the person gives the information by means of an electronic communication, where:

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(a) in all cases—at the time the information was given, it was reasonable to expect that the information would be readily accessible so as to be useable for subsequent reference; and

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(b) if the information is required to be given to a Commonwealth entity, or to a person acting on behalf of a Commonwealth entity, and the entity requires that the information be given, in accordance with particular information technology requirements, by means of a particular kind of electronic communication—the entity’s requirement has been met; and

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(c) if the information is required to be given to a Commonwealth entity, or to a person acting on behalf of a Commonwealth entity, and the entity requires that particular action be taken by way of verifying the receipt of the information—the entity’s requirement has been met; and

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(d) if the information is required to be given to a person who is neither a Commonwealth entity nor a person acting on behalf of a Commonwealth entity—the person to whom the information is required to be given consents to the information being given by way of electronic communication.

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Permission to give information in writing

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(2) If, under a law of the Commonwealth, a person is permitted to give information in writing, the person may give the information by means of an electronic communication, where:

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- 1 (a) in all cases—at the time the information was given, it was
2 reasonable to expect that the information would be readily
3 accessible so as to be useable for subsequent reference; and
4 (b) if the information is permitted to be given to a
5 Commonwealth entity, or to a person acting on behalf of a
6 Commonwealth entity, and the entity requires that the
7 information be given, in accordance with particular
8 information technology requirements, by means of a
9 particular kind of electronic communication—the entity’s
10 requirement has been met; and
11 (c) if the information is permitted to be given to a
12 Commonwealth entity, or to a person acting on behalf of a
13 Commonwealth entity, and the entity requires that particular
14 action be taken by way of verifying the receipt of the
15 information—the entity’s requirement has been met; and
16 (d) if the information is permitted to be given to a person who is
17 neither a Commonwealth entity nor a person acting on behalf
18 of a Commonwealth entity—the person to whom the
19 information is permitted to be given consents to the
20 information being given by way of electronic
21 communication.

22 *Certain other laws not affected*

- 23 (3) This section does not affect the operation of any other law of the
24 Commonwealth that makes provision for or in relation to requiring
25 or permitting information to be given, in accordance with
26 particular information technology requirements:
27 (a) on a particular kind of data storage device; or
28 (b) by means of a particular kind of electronic communication.

29 *Giving information*

- 30 (4) This section applies to a requirement or permission to give
31 information, whether the expression *give*, *send* or *serve*, or any
32 other expression, is used.
33 (5) For the purposes of this section, *giving information* includes, but
34 is not limited to, the following:

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- 1 (a) making an application;
- 2 (b) making or lodging a claim;
- 3 (c) giving, sending or serving a notification;
- 4 (d) lodging a return;
- 5 (e) making a request;
- 6 (f) making a declaration;
- 7 (g) lodging or issuing a certificate;
- 8 (h) making, varying or cancelling an election;
- 9 (i) lodging an objection;
- 10 (j) giving a statement of reasons.

11 Note: Section 13 sets out exemptions from this section.

12 **10 Signature**

13 *Requirement for signature*

- 14 (1) If, under a law of the Commonwealth, the signature of a person is
15 required, that requirement is taken to have been met in relation to
16 an electronic communication if:
- 17 (a) in all cases—a method is used to identify the person and to
18 indicate the person’s approval of the information
19 communicated; and
 - 20 (b) in all cases—having regard to all the relevant circumstances
21 at the time the method was used, the method was as reliable
22 as was appropriate for the purposes for which the
23 information was communicated; and
 - 24 (c) if the signature is required to be given to a Commonwealth
25 entity, or to a person acting on behalf of a Commonwealth
26 entity, and the entity requires that the method used as
27 mentioned in paragraph (a) be in accordance with particular
28 information technology requirements—the entity’s
29 requirement has been met; and
 - 30 (d) if the signature is required to be given to a person who is
31 neither a Commonwealth entity nor a person acting on behalf
32 of a Commonwealth entity—the person to whom the
33 signature is required to be given consents to that requirement

1 being met by way of the use of the method mentioned in
2 paragraph (a).

3 *Certain other laws not affected*

4 (2) This section does not affect the operation of any other law of the
5 Commonwealth that makes provision for or in relation to
6 requiring:

7 (a) an electronic communication to contain an electronic
8 signature (however described); or

9 (b) an electronic communication to contain a unique
10 identification in an electronic form; or

11 (c) a particular method to be used in relation to an electronic
12 communication to identify the originator of the
13 communication and to indicate the originator's approval of
14 the information communicated.

15 Note: Section 13 sets out exemptions from this section.

16 **11 Production of document**

17 *Requirement to produce a document*

18 (1) If, under a law of the Commonwealth, a person is required to
19 produce a document that is in the form of paper, an article or other
20 material, that requirement is taken to have been met if the person
21 produces, by means of an electronic communication, an electronic
22 form of the document, where:

23 (a) in all cases—having regard to all the relevant circumstances
24 at the time of the communication, the method of generating
25 the electronic form of the document provided a reliable
26 means of assuring the maintenance of the integrity of the
27 information contained in the document; and

28 (b) in all cases—at the time the communication was sent, it was
29 reasonable to expect that the information contained in the
30 electronic form of the document would be readily accessible
31 so as to be useable for subsequent reference; and

32 (c) if the document is required to be produced to a
33 Commonwealth entity, or to a person acting on behalf of a

Section 11

- 1 Commonwealth entity, and the entity requires that an
2 electronic form of the document be produced, in accordance
3 with particular information technology requirements, by
4 means of a particular kind of electronic communication—the
5 entity's requirement has been met; and
6 (d) if the document is required to be produced to a
7 Commonwealth entity, or to a person acting on behalf of a
8 Commonwealth entity, and the entity requires that particular
9 action be taken by way of verifying the receipt of the
10 document—the entity's requirement has been met; and
11 (e) if the document is required to be produced to a person who is
12 neither a Commonwealth entity nor a person acting on behalf
13 of a Commonwealth entity—the person to whom the
14 document is required to be produced consents to the
15 production, by means of an electronic communication, of an
16 electronic form of the document.

17 *Permission to produce a document*

- 18 (2) If, under a law of the Commonwealth, a person is permitted to
19 produce a document that is in the form of paper, an article or other
20 material, then, instead of producing the document in that form, the
21 person may produce, by means of an electronic communication, an
22 electronic form of the document, where:
23 (a) in all cases—having regard to all the relevant circumstances
24 at the time of the communication, the method of generating
25 the electronic form of the document provided a reliable
26 means of assuring the maintenance of the integrity of the
27 information contained in the document; and
28 (b) in all cases—at the time the communication was sent, it was
29 reasonable to expect that the information contained in the
30 electronic form of the document would be readily accessible
31 so as to be useable for subsequent reference; and
32 (c) if the document is permitted to be produced to a
33 Commonwealth entity, or to a person acting on behalf of a
34 Commonwealth entity, and the entity requires that an
35 electronic form of the document be produced, in accordance
36 with particular information technology requirements, by

Section 11

- 1 means of a particular kind of electronic communication—the
2 entity’s requirement has been met; and
- 3 (d) if the document is permitted to be produced to a
4 Commonwealth entity, or to a person acting on behalf of a
5 Commonwealth entity, and the entity requires that particular
6 action be taken by way of verifying the receipt of the
7 document—the entity’s requirement has been met; and
- 8 (e) if the document is permitted to be produced to a person who
9 is neither a Commonwealth entity nor a person acting on
10 behalf of a Commonwealth entity—the person to whom the
11 document is permitted to be produced consents to the
12 production, by means of an electronic communication, of an
13 electronic form of the document.

14 *Integrity of information*

- 15 (3) For the purposes of this section, the integrity of information
16 contained in a document is maintained if, and only if, the
17 information has remained complete and unaltered, apart from:
- 18 (a) the addition of any endorsement; or
19 (b) any immaterial change;
- 20 which arises in the normal course of communication, storage or
21 display.

22 *Certain other laws not affected*

- 23 (4) This section does not affect the operation of any other law of the
24 Commonwealth that makes provision for or in relation to requiring
25 or permitting electronic forms of documents to be produced, in
26 accordance with particular information technology requirements:
- 27 (a) on a particular kind of data storage device; or
28 (b) by means of a particular kind of electronic communication.

29 *Exemption*

- 30 (5) This section does not apply to a document required or permitted to
31 be produced to a Commonwealth entity in connection with an
32 application for the grant of a permission, certificate or similar

Section 12

1 thing, where the permission, certificate or thing is of a kind that is
2 not capable of being granted to an Australian citizen.

3 *Copyright*

4 (6) The following provisions have effect:

5 (a) the generation of an electronic form of a document for the
6 purposes of:

7 (i) this section; or

8 (ii) a law of a State or Territory that corresponds to this
9 section;

10 does not constitute an infringement of the copyright in a
11 work or other subject matter embodied in the document.

12 (b) the production, by means of an electronic communication, of
13 an electronic form of a document for the purposes of:

14 (i) this section; or

15 (ii) a law of a State or Territory that corresponds to this
16 section;

17 does not constitute an infringement of the copyright in a
18 work or other subject matter embodied in the document.

19 Note: Section 13 sets out exemptions from this section.

20 **12 Retention**

21 *Recording of information*

22 (1) If, under a law of the Commonwealth, a person is required to
23 record information in writing, that requirement is taken to have
24 been met if the person records the information in electronic form,
25 where:

26 (a) in all cases—at the time of the recording of the information,
27 it was reasonable to expect that the information would be
28 readily accessible so as to be useable for subsequent
29 reference; and

30 (b) if the regulations require that the information be recorded, in
31 electronic form, on a particular kind of data storage device—
32 that requirement has been met.

1 *Retention of written document*

2 (2) If, under a law of the Commonwealth, a person is required to
3 retain, for a particular period, a document that is in the form of
4 paper, an article or other material, that requirement is taken to have
5 been met if the person retains an electronic form of the document
6 throughout that period, where:

7 (a) in all cases—having regard to all the relevant circumstances
8 at the time of the generation of the electronic form of the
9 document, the method of generating the electronic form of
10 the document provided a reliable means of assuring the
11 maintenance of the integrity of the information contained in
12 the document; and

13 (b) in all cases—at the time of the generation of the electronic
14 form of the document, it was reasonable to expect that the
15 information contained in the electronic form of the document
16 would be readily accessible so as to be useable for
17 subsequent reference; and

18 (c) if the regulations require that the electronic form of the
19 document be retained on a particular kind of data storage
20 device—that requirement has been met.

21 (3) For the purposes of subsection (2), the integrity of information
22 contained in a document is maintained if, and only if, the
23 information has remained complete and unaltered, apart from:

24 (a) the addition of any endorsement; or

25 (b) any immaterial change;

26 which arises in the normal course of communication, storage or
27 display.

28 *Retention of electronic communications*

29 (4) If, under a law of the Commonwealth, a person (the **first person**) is
30 required to retain, for a particular period, information that was the
31 subject of an electronic communication, that requirement is taken
32 to be met if the first person retains, or causes another person to
33 retain, in electronic form, the information throughout that period,
34 where:

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- 1 (a) in all cases—at the time of commencement of the retention
2 of the information, it was reasonable to expect that the
3 information would be readily accessible so as to be useable
4 for subsequent reference; and
- 5 (b) in all cases—having regard to all the relevant circumstances
6 at the time of commencement of the retention of the
7 information, the method of retaining the information in
8 electronic form provided a reliable means of assuring the
9 maintenance of the integrity of the information contained in
10 the electronic communication; and
- 11 (c) in all cases—throughout that period, the first person also
12 retains, or causes the other person to retain, in electronic
13 form, such additional information obtained by the first
14 person as is sufficient to enable the identification of the
15 following:
- 16 (i) the origin of the electronic communication;
17 (ii) the destination of the electronic communication;
18 (iii) the time when the electronic communication was sent;
19 (iv) the time when the electronic communication was
20 received; and
- 21 (d) in all cases—at the time of commencement of the retention
22 of the additional information covered by paragraph (c), it was
23 reasonable to expect that the additional information would be
24 readily accessible so as to be useable for subsequent
25 reference; and
- 26 (e) if the regulations require that the information be retained, in
27 electronic form, on a particular kind of data storage device—
28 that requirement is met throughout that period.
- 29 (5) For the purposes of subsection (4), the integrity of information that
30 was the subject of an electronic communication is maintained if,
31 and only if, the information has remained complete and unaltered,
32 apart from:
- 33 (a) the addition of any endorsement; or
34 (b) any immaterial change;
- 35 which arises in the normal course of communication, storage or
36 display.

1 *Copyright*

- 2 (6) The generation of an electronic form of a document for the
3 purposes of:
4 (a) this section; or
5 (b) a law of a State or Territory that corresponds to this section;
6 does not constitute an infringement of the copyright in a work or
7 other subject matter embodied in the document.

8 Note: Section 13 sets out exemptions from this section.

9 **13 Exemptions from this Division**

10 *Exemptions under the regulations*

- 11 (1) The regulations may provide that this Division, or a specified
12 provision of this Division, does not apply to a specified
13 requirement.
14 (2) The regulations may provide that this Division, or a specified
15 provision of this Division, does not apply to a specified
16 permission.
17 (3) The regulations may provide that this Division, or a specified
18 provision of this Division, does not apply to a specified law of the
19 Commonwealth.

20 *Exemptions for courts and tribunals*

- 21 (4) This Division does not apply to the practice and procedure of a
22 court or tribunal. For this purpose, *practice and procedure*
23 includes all matters in relation to which rules of court may be
24 made.

25 *Evidence Act 1995 etc. not affected*

- 26 (5) This Division does not affect the operation of:
27 (a) the *Evidence Act 1995*; or
28 (b) a law of a State or Territory that corresponds to the *Evidence*
29 *Act 1995*; or

Part 2 Application of legal requirements to electronic communications

Division 2 Requirements under laws of the Commonwealth

Section 13

- 1 (c) a law of a State or Territory, or a rule of common law, that
2 makes provision for the way in which evidence is given in
3 proceedings in a court.

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Division 3—Other provisions relating to laws of the Commonwealth

14 Time and place of dispatch and receipt of electronic communications

Time of dispatch

- (1) For the purposes of a law of the Commonwealth, if an electronic communication enters a single information system outside the control of the originator, then, unless otherwise agreed between the originator and the addressee of the electronic communication, the dispatch of the electronic communication occurs when it enters that information system.
- (2) For the purposes of a law of the Commonwealth, if an electronic communication enters successively 2 or more information systems outside the control of the originator, then, unless otherwise agreed between the originator and the addressee of the electronic communication, the dispatch of the electronic communication occurs when it enters the first of those information systems.

Time of receipt

- (3) For the purposes of a law of the Commonwealth, if the addressee of an electronic communication has designated an information system for the purpose of receiving electronic communications, then, unless otherwise agreed between the originator and the addressee of the electronic communication, the time of receipt of the electronic communication is the time when the electronic communication enters that information system.
- (4) For the purposes of a law of the Commonwealth, if the addressee of an electronic communication has not designated an information system for the purpose of receiving electronic communications, then, unless otherwise agreed between the originator and the addressee of the electronic communication, the time of receipt of

Section 14

1 the electronic communication is the time when the electronic
2 communication comes to the attention of the addressee.

3 *Place of dispatch and receipt*

4 (5) For the purposes of a law of the Commonwealth, unless otherwise
5 agreed between the originator and the addressee of an electronic
6 communication:

7 (a) the electronic communication is taken to have been
8 dispatched at the place where the originator has its place of
9 business; and

10 (b) the electronic communication is taken to have been received
11 at the place where the addressee has its place of business.

12 (6) For the purposes of the application of subsection (5) to an
13 electronic communication:

14 (a) if the originator or addressee has more than one place of
15 business, and one of those places has a closer relationship to
16 the underlying transaction—it is to be assumed that that
17 place of business is the originator's or addressee's only place
18 of business; and

19 (b) if the originator or addressee has more than one place of
20 business, but paragraph (a) does not apply—it is to be
21 assumed that the originator's or addressee's principal place
22 of business is the originator's or addressee's only place of
23 business; and

24 (c) if the originator or addressee does not have a place of
25 business—it is to be assumed that the originator's or
26 addressee's place of business is the place where the
27 originator or addressee ordinarily resides.

28 *Exemptions*

29 (7) The regulations may provide that this section does not apply to a
30 specified electronic communication.

31 (8) The regulations may provide that this section does not apply to a
32 specified law of the Commonwealth.

1 **15 Attribution of electronic communications**

2 (1) For the purposes of a law of the Commonwealth, unless otherwise
3 agreed between the purported originator and the addressee of an
4 electronic communication, the purported originator of the
5 electronic communication is bound by that communication only if
6 the communication was sent by the purported originator or with
7 the authority of the purported originator.

8 (2) Subsection (1) is not intended to affect the operation of a law
9 (whether written or unwritten) that makes provision for:

10 (a) conduct engaged in by a person within the scope of the
11 person's actual or apparent authority to be attributed to
12 another person; or

13 (b) a person to be bound by conduct engaged in by another
14 person within the scope of the other person's actual or
15 apparent authority.

16 *Exemptions*

17 (3) The regulations may provide that this section does not apply to a
18 specified electronic communication.

19 (4) The regulations may provide that this section does not apply to a
20 specified law of the Commonwealth.

21 *Certain provisions of the Evidence Act 1995 etc. not affected*

22 (5) This section does not affect the operation of:

23 (a) section 87 or 88 of the *Evidence Act 1995*; or

24 (b) a law of a State or Territory that corresponds to section 87 or
25 88 of the *Evidence Act 1995*; or

26 (c) a law of a State or Territory, or a rule of common law, that
27 provides for a statement made by a person to be treated as an
28 admission made by a party to a proceeding in a court.

Section 16

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2 **Part 3—Miscellaneous**

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4 **16 Regulations**

5 The Governor-General may make regulations prescribing matters:

6 (a) required or permitted by this Act to be prescribed; or

7 (b) necessary or convenient to be prescribed for carrying out or
8 giving effect to this Act.