

# **Electronic Courts and Tribunals Bill**

(Divided from the Judicature Modernisation Bill)

Government Bill

As reported from the committee of the whole House

This Bill was formerly part of the Judicature Modernisation Bill as reported from the Justice and Electoral Committee. The committee of the whole House has further amended the Bill and divided it into the following Bills:

- Senior Courts Bill comprising clauses 1 and 2, Part 1, and Schedules 1A to 4
- District Court Bill comprising Part 2 and Schedules 5 to 7
- Judicial Review Procedure Bill comprising Part 3 and Schedule 8
- Interest on Money Claims Bill comprising Part 4 and Schedules 9AAA, 9AA, and 9
- this Bill comprising Part 5
- Arbitration Amendment Bill comprising subpart 1 of Part 6
- Bills of Exchange Amendment Bill comprising subpart 2 of Part 6
- Building Societies Amendment Bill comprising subpart 3 of Part 6
- Children, Young Persons, and Their Families Amendment Bill comprising subpart 4 of Part 6
- Companies Amendment Bill (No 2) comprising subpart 5 of Part 6 and Schedule 10
- Contractual Remedies Amendment Bill comprising subpart 6 of Part 6
- Copyright Amendment Bill (No 2) comprising subpart 7 of Part 6
- Courts (Remote Participation) Amendment Bill comprising subpart 8 of Part 6
- Criminal Procedure Amendment Bill comprising subpart 9 of Part 6
- Employment Relations Amendment Bill (No 4) comprising subpart 10 of Part 6
- Family Courts Amendment Bill comprising subpart 11 of Part 6

- Insolvency Amendment Bill comprising subpart 12 of Part 6
- Local Government (Rating) Amendment Bill comprising subpart 13 of Part 6
- Property Law Amendment Bill comprising subpart 14 of Part 6
- Remuneration Authority Amendment Bill (No 2) comprising subpart 14A of Part 6
- Resource Management Amendment Bill comprising subpart 15 of Part 6
- Te Ture Whenua Maori Amendment Bill comprising subpart 16 of Part 6
- Trans-Tasman Proceedings Amendment Bill comprising subpart 17 of Part 6

**Key to symbols used in reprinted bill**

**As reported from the committee of the whole House**

text inserted

~~text deleted~~



*Hon Amy Adams*

## **Electronic Courts and Tribunals Bill**

Government Bill

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Electronic Courts and Tribunals Act **2016**.

**2 Commencement**

This Act comes into force on **1 March 2017**.

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*Preliminary provisions*

**471 Purpose**

The purpose of this **Act** is to—

- (a) facilitate the use of permitted documents in, or with respect to, the proceedings of courts and tribunals; and
- (b) allow references to documents in existing enactments relating to the processes of courts and tribunals to be interpreted as including permitted documents; and
- (c) permit the filing of permitted documents at any specified place.

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### 473 Interpretation

- (1) In this **Act**, unless the context otherwise requires,—

**associated process** means a process that a court or tribunal, or a participant in proceedings before a court or tribunal, uses to create a document, including signing, sealing, witnessing, and filing the document

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**electronic** includes electrical, digital, magnetic, optical, electromagnetic, biometric, and photonic

**head of bench** means,—

- (a) in relation to the Supreme Court, the Chief Justice:
- (b) in relation to the Court of Appeal, the President of the Court of Appeal:
- (c) in relation to the High Court, the Chief High Court Judge:
- (d) in relation to the Employment Court, the Chief Judge of the Employment Court:
- (e) in relation to the Court Martial, the Judge Advocate General:
- (f) in relation to the Court Martial Appeal Court, the Chief High Court Judge:
- (g) in relation to the Summary Appeal Court of New Zealand, the Judge Advocate General:
- (h) in relation to the District Court and all of its divisions, the Chief District Court Judge:
- (i) in relation to the Environment Court, the Principal Environment Judge:
- (j) in relation to the Māori Land Court, the Chief Judge of the Māori Land Court:
- (k) in relation to a coroner, the chief coroner:
- (l) in relation to a tribunal, the head or chair of the tribunal or, if the tribunal has no head or chair, the longest-serving judicial officer

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**information system** means a system for producing, sending, receiving, storing, displaying, or otherwise processing electronic communications

**Minister** means the Minister or Ministers of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is or are for the time being responsible for the administration of this **Act**

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- paper-based form** means a format or layout that applies to information in paper or other non-electronic form, including (but not limited to) the material that must be used
- permitted document** means a document, including its associated process, in electronic form that is made by, or for use in, a court or tribunal. 5
- (2) None of the following documents is a permitted document unless and until the Governor-General, by Order in Council made on the recommendation of the Minister, declares it to be a permitted document:
- (a) ~~a document that is required to be served by personal service:~~
  - (b) a document given on oath or by affirmation: 10
  - (c) a statutory declaration:
  - (d) a will, a codicil, or any other testamentary instrument:
  - (e) a power of attorney or an enduring power of attorney:
  - (f) a negotiable instrument:
  - (g) any notice required to be attached to any thing or left or displayed in any place: 15
  - (h) any warrant or other instrument authorising entry into premises; or the search or seizure of any person or thing:
  - (i) any other document specified by the Governor-General by Order in Council made on the recommendation of the Minister: 20
  - (j) an item specified in any of paragraphs (b) to (i) that is required to be served by personal service.
- 474 Act binds the Crown**
- This **Act** binds the Crown.
- General provisions* 25
- 475 ~~Part applies to certain courts and tribunals~~Application**
- (1) This **Act** applies to ~~any court or tribunal, or any particular jurisdiction of a court or tribunal specified by the Governor-General by Order in Council made on the recommendation of the Minister.~~ 1 or more of the following specified by the Governor-General by Order in Council made on the recommendation of the Minister: 30
- (a) any court or tribunal:
  - (b) any particular jurisdiction of a court or tribunal:
  - (c) any court or tribunal located in a particular place:
  - (d) any particular jurisdiction of a court or tribunal located in a particular place. 35

- (2) This **Act** does not apply to any class of persons specified by the Governor-General by Order in Council made on the recommendation of the Minister.

#### 476 Permitted documents may be used

- (1) A court or tribunal, or a participant in proceedings before a court or tribunal, may use permitted documents in, or with respect to, the proceedings of the court or tribunal. 5
- (2) However, nothing in this **Act** requires a person to use, provide, or accept a permitted document without the person's consent.
- (3) Despite **subsection (2)**, a class of persons specified in regulations made under **section 502** may be required to use, provide, or accept a permitted document— 10
- (a) in a specified court or tribunal; or
  - (b) in a specified jurisdiction of a court or tribunal; or
  - (c) in specified circumstances.
- (4) Nothing in **subsection (2)** overrides any provision in any other Act that requires a person to use, provide, or accept a permitted document. 15

#### 477 Consent may be inferred from person's conduct

A person's consent to use, provide, or accept a permitted document may be inferred from the person's conduct, including (but not limited to)—

- (a) filing a permitted document with a court or tribunal: 20
- (b) providing to a court or tribunal an electronic address where permitted documents may be sent.

Compare: 2006 No 40 s 219(1)

#### 478 Presumption of validity

In the absence of proof to the contrary, a document is not invalid merely because it is a permitted document. 25

#### 479 Certain documents to be treated as permitted documents

A court or tribunal must treat a reference to a document, or its associated process, in an enactment relating to the processes of a court or tribunal as a reference to a permitted document unless— 30

- (a) the enactment explicitly provides otherwise; or
- (b) the context of the enactment requires a different interpretation.

Compare: 1999 No 85 s 4(1)

*Manner in which permitted documents meet certain non-electronic requirements*

**480 Requirement for information to be in writing**

A requirement that information be in writing is met by information in a permitted document if the information is readily accessible so as to be usable for subsequent reference. 5

Compare: 2002 No 35 s 18

**481 Requirement for information to be recorded in writing**

A requirement that information be recorded in writing is met by recording the information in a permitted document if the information is readily accessible so as to be usable for subsequent reference. 10

Compare: 2002 No 35 s 19

**482 Requirement for information to be given in writing**

(1) A requirement to give information in writing is met by giving the information in a permitted document if the information is readily accessible so as to be usable for subsequent reference. 15

(2) **Subsection (1)** applies even if the information must be given in a specified manner (for example, by filing, sending, serving, delivering, lodging, or posting the information).

(3) In this section, **requirement to give information** includes (but is not limited to)— 20

(a) making an application:

(b) making or lodging a claim:

(c) giving, sending, or serving a notification:

(d) lodging a return: 25

(e) making a request:

(f) making a declaration:

(g) lodging or issuing a certificate:

(h) making, varying, or cancelling an election:

(i) lodging an objection: 30

(j) giving a statement of reasons:

(k) lodging an appeal.

Compare: 2002 No 35 s 20(1), (3), (4)

- 483 Requirement to provide multiple copies of information**  
A requirement to provide multiple copies of information to the same person at the same time is met by providing a single electronic version of the information in a permitted document.  
Compare: 2002 No 35 s 20(2) 5
- 484 Requirement to provide information in certain form**  
A requirement to provide information in a manner that complies with a paper-based form is met by providing the information in a permitted document if the information is readily accessible so as to be usable for subsequent reference.  
Compare: 2002 No 35 s 21 10
- 485 Requirement for signatures**  
A requirement for a signature, other than a witness's signature, is met in a permitted document by means of an electronic signature if the electronic signature—  
(a) adequately identifies the signatory and adequately indicates the signatory's approval of the information to which the signature relates; and 15  
(b) is as reliable as is appropriate given the purpose for which, and the circumstances in which, the signature is required.  
Compare: 2002 No 35 s 22(1)
- 486 Requirement for signatures of witnesses** 20  
A requirement for a signature or a seal to be witnessed is met in a permitted document by means of a witness's electronic signature if,—  
(a) in the case of the witnessing of a signature, the signature to be witnessed is an electronic signature that complies with **section 485**; and  
(b) in the case of the witnessing of a signature or a seal, the electronic signature of the witness— 25  
(i) adequately identifies the witness and adequately indicates that the signature or seal has been witnessed; and  
(ii) is as reliable as is appropriate given the purpose for which, and the circumstances in which, the witness's signature is required. 30  
Compare: 2002 No 35 s 23(1)
- 487 Requirement for seals**  
A requirement for a seal is met in a permitted document by means of an electronic seal if the electronic seal—  
(a) adequately identifies the party attaching the seal; and 35  
(b) is as reliable as is appropriate given the purpose for which, and the circumstances in which, the seal is required.

**488 Presumption about reliability of electronic signatures**

- (1) For the purposes of **sections 485 and 486**, an electronic signature is presumed to be as reliable as is appropriate if—
- (a) the means of creating the electronic signature is linked to the signatory and to no other person; and 5
  - (b) the means of creating the electronic signature was under the control of the signatory and of no other person; and
  - (c) any alteration to the electronic signature made after the time of signing is detectable; and
  - (d) where the purpose of the legal requirement for a signature is to provide assurance as to the integrity of the information to which it relates, any alteration made to that information after the time of signing is detectable. 10
- (2) **Subsection (1)** does not prevent any person from proving on other grounds or by other means that an electronic signature—
- (a) is as reliable as is appropriate; or 15
  - (b) is not as reliable as is appropriate.

Compare: 2002 No 35 s 24

**489 Requirement to retain document or information that is in paper-based form**

- (1) A requirement to retain information that is in paper-based form is met by retaining an electronic form of the information in a permitted document if— 20
- (a) the electronic form provides a reliable means of maintaining the integrity of the information; and
  - (b) the information is readily accessible so as to be usable for subsequent reference. 25
- (2) **Subsection (1)** applies to information that is a public record within the meaning of the Public Records Act 2005 only if the Chief Archivist has approved the retention of that information in electronic form.
- (3) To avoid doubt, if information is retained in electronic form in accordance with **subsection (1)**, the paper-based form of that information need not be retained. 30

Compare: 2002 No 35 s 25

**490 Requirement to retain information that is in electronic form**

- A requirement to retain information that is in a permitted document is met by retaining the information— 35
- (a) in paper-based form if the paper-based form provides a reliable means of maintaining the integrity of the information; or
  - (b) in electronic form if—

- (i) the electronic form provides a reliable means of maintaining the integrity of the information; and
- (ii) the information is readily accessible so as to be usable for subsequent reference.

Compare: 2002 No 35 s 26

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#### **491 Extra conditions for electronic communications**

In addition to the conditions specified in **section 490**, if a person is required to retain information in a permitted document that consists of or includes an electronic communication,—

- (a) the person must also retain the details obtained by that person that enable the identification of—
  - (i) the origin of the electronic communication; and
  - (ii) the destination of the electronic communication; and
  - (iii) the time when the electronic communication was sent and the time when it was received;
- (b) the details referred to in **paragraph (a)** must be readily accessible so as to be usable for subsequent reference.

Compare: 2002 No 35 s 27

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#### **492 Requirement to provide or produce information that is in paper-based form**

A requirement to provide or produce information in paper-based form is met by providing or producing the information in electronic form, whether by means of an electronic communication or otherwise, if—

- (a) the form and means of the provision or production of the information reliably maintain the integrity of the information, given the purpose for which, and the circumstances in which, the information is required to be provided or produced; and
- (b) the information is readily accessible so as to be usable for subsequent reference.

Compare: 2002 No 35 s 28(a), (b)

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#### **493 Requirement to provide or produce information that is in electronic form**

A requirement to provide or produce information that is in a permitted document is met by providing or producing the information—

- (a) in paper-based form; but, if the integrity of the information cannot be reliably maintained, the person who must provide or produce the information must—
  - (i) notify every person to whom the information is required to be provided or produced of that fact; and

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- (ii) if requested to do so, provide or produce the information in electronic form in accordance with **paragraph (b)**; or
- (b) in electronic form if—
  - (i) the form and means of the provision or production of the information reliably maintain the integrity of the information, given the purpose for which, and the circumstances in which, the information is required to be provided or produced; and
  - (ii) the information is readily accessible so as to be usable for subsequent reference.

Compare: 2002 No 35 s 29(a), (b)(i), (ii) 10

#### 494 Requirement to provide access to information that is in paper-based form

A requirement to provide access to information that is in paper-based form is met by providing access to the information in a permitted document if the form and means of access to the information reliably maintain the integrity of the information, given the purpose for which, and the circumstances in which, access to the information is required to be provided. 15

Compare: 2002 No 35 s 30(a)

#### 495 Requirement to provide access to information that is in electronic form

A requirement to provide access to information that is in a permitted document is met by providing access to the information— 20

- (a) in paper-based form; but, if the integrity of the information cannot be reliably maintained, the person who must provide access to the information must—
  - (i) notify every person to whom access is required to be provided of that fact; and 25
  - (ii) if requested to do so, provide access to the information in electronic form in accordance with **paragraph (b)**; or
- (b) in electronic form, whether by means of an electronic communication or otherwise, if the form and means of access to the information reliably maintain the integrity of the information, given the purpose for which, and the circumstances in which, access to the information is required to be provided. 30

Compare: 2002 No 35 s 31(a), (b)(i)

#### 496 Requirement relating to content of information

Nothing in this **Act** affects any requirement in any enactment to the extent that the requirement relates to the content of information. 35

Compare: 2002 No 35 s 33

**497 Copyright in works in permitted documents**

The copyright in a work in a permitted document is not infringed by any of the following acts if they are carried out for the purposes of meeting a paper-based requirement by electronic means ~~in a permitted document~~:

- (a) the generation of an electronic form of a document: 5
- (b) the production of information by means of an electronic communication.

Compare: 2002 No 35 s 34

*Rules regarding transmission of permitted documents***498 Time of dispatch of permitted documents**

A permitted document is taken to be dispatched at the time the permitted document first enters an information system outside the control of the originator. 10

Compare: 2002 No 35 s 10(1)

**499 Time of receipt of permitted documents**

A permitted document is taken to be received at the time the permitted document first enters the information system that the addressee has designated for the purpose of receiving the permitted document. 15

Compare: 2002 No 35 s 11(a)

**500 Place of filing**

- (1) Despite **section 505(2)** or any provision in any other enactment, a court or tribunal, or a participant in proceedings before a court or tribunal, may file a permitted document at any place that is specified in regulations made under **section 502**. 20
- (2) The place for filing may be—
  - (a) centralised or located within the jurisdiction of the relevant court or tribunal: 25
  - (b) physical or electronic.

*Fees and regulations***501 Filing fees payable for permitted documents**

- (1) Despite **section 505(2)** or any provision to the contrary in any other enactment, a person who files a permitted document with a court or a tribunal must pay— 30
  - (a) the fee that is prescribed for that document in regulations made under **section 502**; or
  - (b) if a fee is not prescribed for that document in regulations made under **section 502**, the fee (if any) that would apply under the relevant enact- 35

ment if the person were to file the document in its paper-based form less any discount prescribed in regulations made under **section 502**.

- (2) A fee that is payable under **subsection (1)(a)** is inclusive of goods and services tax.
- (3) Whether a fee that is payable under **section (1)(b)** is inclusive or exclusive of goods and services tax is to be determined under the relevant enactment. 5

## 502 Regulations

The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

- (a) prescribing any conditions that a permitted document must meet to be used, provided, or accepted by a court or tribunal, or a participant in proceedings before a court or tribunal: 10
- (b) prescribing the form or forms of permitted documents:
- (c) prescribing any fees for the filing of permitted documents:
- (d) prescribing any fee discount, which may be expressed as— 15
- (i) a specified amount that applies to a specified document; or
- (ii) a percentage that applies to a range of documents:
- (e) prescribing the place or places for filing permitted documents:
- (ea) specifying any classes of persons required to use, provide, or accept a permitted document— 20
- (i) in a specified court or tribunal in which the permitted document must be used, provided, or accepted:
- (ii) in a specified jurisdiction of a court or tribunal in which the permitted document must be used, provided, or accepted:
- (iii) in specified circumstances in which the permitted document must be used, provided, or accepted: 25
- (f) providing for any other matters that are contemplated by, or necessary for, giving full effect to this **Act** and its due administration.

### *Consequential amendments and transitional provisions*

## 503 Amendment to Electronic Identity Verification Act 2012 30

- (1) This section amends the Electronic Identity Verification Act 2012.
- (2) After section 67(1)(c), insert:
- (ca) a court or tribunal specified in an order made under **section 475 of the Judicature Modernisation Act 2013**:

## 504 Amendment to Electronic Transactions Act 2002 35

- (1) This section amends the Electronic Transactions Act 2002.

- (2) In the Schedule, Part 1, ~~after the item relating to the Electoral Regulations 1996~~, insert in its appropriate alphabetical order:

**Part 5 of the Judicature Modernisation Act 2013 (2013 No 00)**

**504A Amendment to Resource Management Act 1991**

- (1) This section amends the Resource Management Act 1991. 5
- (2) After section 352(1), insert:
- (1A) Nothing in subsection (1) overrides the provisions of **Part 5 of the Judicature Modernisation Act 2013**.

**505 Transitional provisions**

- (1) If any relevant provision of this **Act** applies to a court or tribunal, it applies to all proceedings commenced in that court or tribunal before, on, or after the application of that provision except— 10
- (a) the continuation of a hearing that commenced before the application of that provision; and
- (b) any appeal from, or review of, a determination made at a hearing of that kind. 15
- (2) Any legislative instrument amending the rules of court that is made after the commencement of this section must be consistent with the provisions of this **Act**.
- Compare: 2006 No 69 s 5 20

**Legislative history**

14 September 2016

Divided from Judicature Modernisation Bill (Bill 178–2) as Bill 178–3E