

Electronic Transactions (Contract Formation) Amendment Bill

Member's Bill

Explanatory note

General policy statement

This Bill clarifies the legal position on the time at which a contract is formed if the acceptance of the offer is sent by electronic communication. The general rule of contract formation is that a contract is formed at the time acceptance of the offer is communicated to the offeror.

The rule in *Adams v Lindsell*, the “postal acceptance rule”, created an exception for acceptances conveyed by post. This exception held that when an offer was accepted by post, the contract was deemed to have been formed from the moment the acceptance was posted (as opposed to the moment the post was read by the offeror). This exception has been extended to acceptances conveyed by telegram.

The issue of whether the postal acceptance rule can be extended to electronic communications has not yet been considered by the courts. However, there is no reason to extend the legal fiction created by the rule to acceptances conveyed by electronic communications. This Bill ensures the general rule of contract formation is applied to contracts accepted by electronic communications.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that the Bill comes into force on the day after the date on which it receives the Royal assent.

Clause 3 provides that the Bill amends the Electronic Transactions Act 2002 (the **principal Act**).

Clause 4 states the purpose of the Bill.

Clause 5 inserts a **new section 32A** establishing the rule for contract formation in cases where the offer is accepted by electronic communication.

Paul Goldsmith

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Electronic Transactions (Contract Formation) Amendment Act **2012**.
- 2 Commencement** 5
This Act comes into force on the day after the date on which it receives the Royal assent.
- 3 Principal Act** 10
This Act amends the Electronic Transactions Act 2002 (the **principal Act**).

4 Purpose

The purpose of this Act is to establish that, for the purpose of contract formation, an offer is deemed to be accepted by an electronic communication at the time of receipt of the acceptance by the offeror.

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5 New section 32A and cross-heading inserted

After section 32, insert:

“Contract formation

“32A Contract formation

An offer that can be accepted by electronic communication is deemed to be accepted at the time of receipt of the acceptance by the offeror.”

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