From the editors...

In this issue, we bring you articles regarding:

- changes to the Electronic Transactions Act, and some remaining areas of uncertainty in this field;

- risks that Australian businesses should consider which are associated with storing data in the U.S; and

- electronically searching documents in multiple languages when preparing for litigation, an issue that may arise when litigation is being run in one language and there are documents around the world in different countries in other languages.

Also, we publish an article submitted by Tyler Fox in the 2010 Student Essay Prize competition on the topic of offences involving online grooming. We thank all those who submitted essays in the 2010 competition, and remind all eligible students that the competition is being run again in 2011. Details of the competition are on page 7.

We also welcome submissions of articles from our members. Please contact the editors if you have an idea you wish to discuss or an article you would like published.

Finally, the New South Wales Society for Computers and the Law is very pleased to announce that it has recently launched a revamped web site. The web site is at www.nswscl.org.au. If you have not visited for awhile, check it out.

We hope you enjoy this issue.

Martin Squires and Vinod Sharma

The current test requires that, having regard to all relevant circumstances at the time, the electronic signature was 'as reliable as appropriate for the purpose for which the electronic communication was generated or communicated'. The requirement for the signature to be as 'reliable as appropriate' gives significant flexibility for assessing the degree of legal security appropriate for a particular communication. The Explanatory Memorandum to the Bill explains that this should take into account:[1]

> 'a range of legal, technical and commercial factors, including the nature of the activity taking place, the frequency of activity between the parties, the value and importance of the information contained in the communication, and the availability and cost of using alternative methods of identification'.

This element of the test is maintained in proposed section 10(1)(b)(i).

Otherwise, the test is broadened in two respects. Firstly, in considering whether the signature is 'reliable as appropriate', the new test proposes to allow consideration of all the circumstances 'including any relevant agreement' – for instance, an agreement made between the parties specifying that an electronic signature will be effective. Secondly, the test will also be satisfied where it is proven that the electronic signature fulfilled the function of identifying the

signatory and indicating the signatory's intention in respect of the information in the electronic communication – this is to ensure that a party cannot invoke the 'reliability test' to repudiate a signature where the identity and intentions of the party are not in contention.[2]

A further change to section 10 is that an electronic signature will indicate a signatory's '*intention in respect of*' the electronic communication, rather than their '*approval*' of a document. This change recognises that written signatures do not necessarily indicate approval of a document; for instance, when a person merely witnesses a document.[3]

Time and place of dispatch and receipt of electronic communications

Further clarity is given to time and place of dispatch and receipt of communications under section 14 of the Act. The Bill proposes to repeal section 14 and replace it with the following sections:

Time of dispatch (new section 14)

Whereas section 14(1-2) of the Act currently specifies that the time of dispatch of an electronic communication is at the time when the electronic communication enters an information system outside the control of the originator, the Bill proposes new section 14(1) to take the time of dispatch to be either:

> (a) when the electronic communication leaves an information system under the control of the