From the editors...

In this issue, James North and Daniel Thompson consider the absence of the conceptual distinction between data controllers and data processors under Australian privacy law. Unlike many foreign privacy regimes, Australia does not distinguish between entities that control personal information and entities that process personal information on the behalf of a controlling entity. In the context of foreign investment in data centre infrastructure across Asia, James and Daniel consider the implications of this conceptual omission, both to Australia's growing cloud industry, and Australia's prospects of becoming a data-hub in the Asian region.

Monique Donato's article, '"Status Update", Liability for third party comments beyond Advertising Codes', discusses potential liability for third party comments on company Facebook pages in respect of both the Australian Association of National Advertisers Code of Ethics and under the law. In light of the recent decisions by the Australian Advertising Standards Board and the New Zealand Advertising Standards Authority's guidance note, the regulatory response is outlined together with a consideration of the means in which companies may cope with these newfound risks of liability.

The final part of Dr Pamela Gray's and Xenogene Gray's book review of Peter Hinssen's book, The New Normal, concludes their analysis of the implications of a changing social and technological landscape for the legal profession and the future of legal services.

Indeed, Australia's regulatory environment has been ranked fairly high against the 13 other jurisdictions in the Asia Cloud Computing Association's 2012 Cloud Readiness Index (as shown in the table below).

Data privacy has become a central regulatory issue for trans-border data residency and cloud computing, and numerous countries in the region (including Singapore and Australia) have recently introduced or reformed laws to meet the challenges of cloud computing. Legal regimes protecting privacy must ensure that suitable legal obligations exist to protect personal or sensitive information, but in a cloud environment, such regimes must ensure there is clarity as to who such obligations apply (for instance, do obligations apply to cloud service providers, or the cloud provider's customers who control personal information uploaded through the cloud service), and should also ensure that regulation does not unnecessarily impede the cross-border flow of information. The methodology applied to the 2012 Cloud Readiness Index with respect to data privacy considered not only the level of protection and enforcement for personal data, but also the

harmonisation of national privacy regimes with regional best practice, including the principles set out in the APEC Privacy Principles.

Although Australia ranks fairly well against its neighbours in terms of data privacy, this article discusses the absence of a key conceptual distinction in Australian privacy law that exists in many foreign privacy regimes, including in Singapore's recently introduced *Personal Data Protection Act 2012*, and that is contained in the APEC Privacy Principles – namely, the distinction between a 'data controller', who has control over personal information and the purposes for which such information is used, and a 'data processor', who processes personal information at the direction and on the behalf of a 'data controller'.

The lack of this distinction in Australia's privacy regime makes it difficult for cloud computing providers (as processors of data) to determine their privacy obligations, and this regulatory uncertainty may potentially inhibit foreign investment in Australia's cloud industry and stymie Australian regional data-hub ambitions.

Table 1 – 2012 Australia and Singapore regulatory rankings

	Data Privacy	Data Sovereignty	IP Protection	Freedom of Information Access	Regulatory ranking
Australia	7.5 (equal 3rd)	7.3 (4th)	7.6 (equal 3rd)	8.6 (5th)	4th
Singapore	4.5 (11th)	8.1 (1st)	8.7 (1st)	7.1 (equal 11th)	7th
Top score / average score	9.0 / 6.3	8.1 / 5.3	8.7 / 6.3	8.9 / 7.8	