From the editors…

In this issue, Steve White gives his insights into how arbitration of disputes in technology contracts play out in practice, including the tips and traps, and what to expect from a good arbitrator.

Adrian Agius, the winner of the 2016 Student Essay Prize, considers the prevalence of "web-scraping" (automated data extraction and processing on the web) and the lack of certainty surrounding its legality.

Philip Catania and Tim Lee discuss how privacy laws apply to metadata following the Full Federal Court's decision dismissing an appeal by the Privacy Commissioner from a decision by the Administrative Appeals Tribunal which held that certain telecommunications metadata generated by Telstra did not constitute Personal Information. Philip and Tim provide valuable insights into how this decision sits with international metadata regulation and the impacts it could have on the role of the Privacy Commissioner in facing the privacy challenges arising from the internet of things.

Finally, Dr Gordon Hughes and Andrew Sutherland provide a case note on *Peter Vogel Instruments v Fairlight*, which serves as a warning of the risks of the potential fallout where parties fail to properly understand common commercial terms, including intellectual property licensing and assignment, and termination rights.

The Editors

Daniel Thompson and Isaac Lin

That said those fees, whilst possibly substantial, will be vastly secondary to the advantages of having the arbitration efficiently run.

Accordingly, finding the right person can save significant cost and time.

Once appointed the arbitrator will call a preliminary conference (normally by telephone) whereby the parties either agree the methodology to resolve the dispute or the arbitrator so appointed will determine same.

Who is the right person for any particular arbitration varies depending on the nature of the dispute. Technical knowledge of the law and the subject matter material in dispute can be a very large advantage.

In any event, the person chosen as arbitrator should, most importantly, have a strong approach to Customer service. Customer service has been almost a dirty word in judicial circles. Put simply, the function of the Court is not to provide a service. The function of the Court is to administer the law and not necessarily proceed as agreed by the parties.

In a climate in which few customers speak of the good customer service they received before a Court or arbitrator, the customer understandably poses and answers the following controversial question: "Why pay for ordinary service when you can get a similar or same unsatisfactory experience at the State's expense?"

Accordingly, this question highlights a key opportunity for arbitrators to excel in customer service. The problem, of course, is customer service is not often considered within arbitral circles and may seem inconsistent with a quasi-judicial role required from arbitrators.

My view and the purpose of this article is to contend that customer service should be "best practice" in arbitration and implemented by all arbitrators as a key to the arbitral advantage. Further, such activities are part of the arbitral framework found within the relevant legislation.

The key underpinning of the *Commercial Arbitration Act 2010* (NSW) ("the Act") is set out in section 1C, Paramount object of Act (there are similar provisions in the legislation of the other States[1]). It provides (my emphasis):

1C Paramount object of Act

(1) The paramount object of this Act is to facilitate the fair and final resolution of commercial disputes by impartial arbitral tribunals without unnecessary delay or expense.

(2) This Act aims to achieve its paramount object by:

(a) enabling parties to agree about how their commercial disputes are to be resolved (subject to subsection (3) and such safeguards as are necessary in the public interest), and

(b) providing arbitration procedures that enable commercial disputes to be resolved in a cost effective manner, informally and quickly.

(3) This Act must be interpreted, and the functions of an arbitral tribunal must be exercised, so that (as far as practicable) the paramount object of this Act is achieved.

(4) Subsection (3) does not affect the application of section 33 of the Interpretation Act 1987 for the purposes of interpreting this Act.

I encourage readers to examine each of the following customer service proposals and see if their proposed arbitrator will provide same.

Customer Service Proposal 1 - Speed

An arbitrator must promptly read the correspondence passing between the parties that they elect to show to the arbitrator.