joins hospital as vicariously liable for staff negligently entering data etc); or

- the programme could be called as and 'expert witness', or more likely relied upon by an expert witness, in a trial, to show what the diagnosis should have been.

These possibilities raise many issues, and the paper examines some of them briefly.

There is a growing range of 'expert systems' available, including litigation evaluation, and the issue should be a live one.

The remainder of the paper concentrated on the admissibility of evidence generated by computer. Computer printouts are strictly speaking not records of transactions, or even copies of records, but only information selected and extracted from the record, in accordance with the instructions given to the computer. Difficulties therefore arise in treating computer generated records as evidence in court.

In those States where authentication of documents is not mandatory and where "document" has been given an extended meaning to include disc or tape, computer evidence may be admitted under these provisions (to a lesser extent in criminal matters). Another solution has been specific legislation to allow for the admission of computer records. The author examines these provisions in detail and finds their usefulness doubtful. He argues for basing admissibility on common law principles, which may be developed to accommodate further developments as they arise.

The author also outlines the areas in which the probative value of computer evidence may be attacked – data entry, hardware and software – and the relative difficulties associated with such attack. He concludes that the resulting cases on discovery will be long and arduous, and will require practitioners skilled in their understanding of computers both to adduce the evidence and to attack it.

## COMPUTER EVIDENCE–PRACTICAL SOLUTIONS TO A CONTEMPORARY PROBLEM

• *by Ian Nosworthy*

The two major objections to the admission of computer evidence have been the best evidence rule and the rule against hearsay. Ian Nosworthy examines these objections, and the various answers to them.

Correctly understood, he argues, the best evidence rule does not provide any obstacle to the admission of computer generated information. However, in almost all cases the admission of computer output necessarily involves the making of an exception to the hearsay rule.

There have been two major approaches to the admissibility of computer evidence: the 'computer specific' approach and the 'business records' approach whereby business records are an exception to the hearsay rule. The computer specific approach has been taken in Victoria, Queensland, A.C.T. and South Australian computer specific legislation. The business records exception

is available in different forms under Commonwealth, New South Wales, South Australian, Western Australian and Northern Territory legislation.

The major concern in relation to the admission of computer evidence relates to the risk that the information supplied will be inaccurate and that the inaccuracy will not be obvious to the user. The author counters these concerns. The main area of attack on computer evidence should not be on the computer itself, he argues, but on the accuracy of the data entry, and the safeguards, or lack of them, taken to avoid error in that process.

The author concludes that the presumption of accuracy of business records as a basis for accepting them as evidence is particularly attractive for use in the admission of computer evidence. The reliance by business on computer records should be treated by the courts as a sound basis for accepting them as reliable. The New South Wales business records provision is the provision he most favours because of the conceptual generality of its language.

• *Technology partner, Finlaysons*

**Comment**

Both Meagher Q.C. and Nosworthy are unconvinced of the usefulness of the computer specific legislation governing the admission of computer evidence. While Meagher Q.C. argues for the ability of the common law to develop to cope with this issue, Nosworthy would prefer the business records exception to the hearsay rule to be enacted and used for this purpose throughout Australia. In the meantime we have a combination of those approaches in some jurisdictions. No doubt there will be inconsistency flowing from this diversity for some time to come.

# A COMPUTERISED SENTENCING INFORMATION SYSTEM FOR NSW COURTS

• *by Janet Chan*

One of the major roles of the Judicial Commission of New South Wales has been the design of a computerised sentencing information system, as a method of promoting consistency in sentencing.

Janet Chan, the Research Director at the Judicial Commission, describes the background and development of the computerised sentencing information system (SIS), and compares it with other forms of guidance proposed or used in other jurisdictions.

**Aims**

The aim of the SIS is to promote sentencing consistency through the dissemination of information. The assumption is that sentence disparity may be reduced by providing judicial officers with information on the statistical distribution of penalties imposed under specified combinations of "case characteristics".

**Data Bases**

The SIS is made up of four data bases:

1. The *Penalty Statistics* data base which reports the range and frequency distribution of penalties imposed in past cases similar to the one being