With the rapid advances of technology come equally rapid changes in the way we interact and communicate with one another. Where once correspondence was sent by post and negotiations were drawn out over a number of weeks or months, it is now often resolved by email in a matter of days. The acceptance or agreement of contract terms by signature used on an electronic document (electronic signature) is no exception and will often be considered binding.

Though the concept of electronic signatures is not new and the preference (at least amongst the legal profession) appears to remain with ‘wet ink’ signatures, the trend and popularity towards an electronic form of execution seems to be growing.

Where an electronic signature is to be used, Section 9 requires that:

1. the method of signing identifies the person and indicates that person’s intention in relation to the document being signed;
2. the method was reliable in the circumstances; and
3. the recipient consents to the document being signed electronically.

Subject to the electronic signature complying with the above, the validity of the document cannot be denied on the basis it had been signed electronically.

The legal framework for the electronic signature has been in place for some time under the *Electronic Transactions Act 1999* (Cth) which has been adopted generally in the Australian Capital Territory under the *Electronic Transactions Act 2001* (ACT) (Act).

It should be noted however, that the requirements set out under Section 9 are intentionally non-specific and have the obvious downfall of allowing for the method of electronic signature to be legally challenged. There is further uncertainty in that the validity or reliability of the method of electronic signature will also depend upon the type of document or the circumstances in which the document is being signed. The Explanatory Memorandum to the Act states that the intention was to resolve the Act *having to be revised to take into account technological changes.*

Caution should also be taken when signing electronically as there are specific Territory laws which may prevent this method of execution. For instance, Section 219 of the Civil Law (Property Act) 2006 (ACT) requires that there be at least one witness to the execution of a deed. Due to the very nature of an electronic signature (there is no witness), such provisions cannot be satisfied electronically.

**THE TREND AND POPULARITY TOWARDS AN ELECTRONIC FORM OF EXECUTION SEEMS TO BE GROWING.**