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ARTICLES

Regulate or Revise: Addressing Algorithmic Bias in AI-driven Residential Mortgage Underwriting in Australia – Sonali Yardi

Australian banks have recently indicated their intention to offer fully automated digital mortgages, driven by artificial intelligence (AI). While this will likely improve loan approval times, it risks causing algorithmic bias. Utilising a hypothetical-based methodology, this article analyses how the *Racial Discrimination Act 1975* (Cth), *National Consumer Credit Protection Act 2009* (Cth) and *Corporations Act 2001* (Cth) currently address algorithmic bias in AI-driven residential mortgage underwriting. Identifying legislative gaps, this article then turns to what type of law reform is best fit to address this algorithmic bias. This article evaluates two typical reform approaches, technology regulation and revising anti-discrimination laws, before turning to a more novel approach, revising financial regulation laws. This article argues that the latter approach is most favourable as it empowers the Australian Securities and Investments Commission to protect against the main causes of algorithmic bias: biased data, poor system design and testing, and opaque machine learning models. 4

Why a Director Can and Should Be Held Liable for Inducing Their Company’s Breach of Trust – Lachlan J McIntyre

The trading trust is an extremely popular legal tool in Australia, and many more companies owe fiduciary duties in relationships such as partnership, joint-venture and agency. When a company breaches trust, wronged beneficiaries will often turn to their trustee/fiduciary for recourse, only to find them minimally capitalised or insolvent. Whether it is then possible to sue the company’s director for inducing or procuring that breach of trust is a question of considerable commercial significance, especially given recent global financial uncertainty. Yet, the answer to that question is unknown in New South Wales and beyond, with one Court of Appeal case proceeding on the basis that such liability could attach to such a director, but doubting the validity of that position: *Pittmore v Chan*. This article tests the thesis that accessorial liability can extend to directors who induce their company’s breach of trust and should so extend. The article places special focus on the doctrine of inducing breach of trust (as opposed to liability for knowing assistance) due to the ability in the former case for the breach of trust by the trustee company to be innocent, unlike in the latter case (for which the underlying breach of trust must be a “dishonest or fraudulent design”) and in the case of liability for inducing breach of contract. To this end, an acceptance of the thesis position by Australian courts could offer significant increased protection to wronged beneficiaries, and increased liability for directors in line with statutory trends. Such a development would be of considerable practical significance in the banking and financial services spheres. 32

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