

# Australian Journal of Corporate Law (AJCL)

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(introduction, keynote address and articles included in this part are linked to the LexisNexis platform)

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Developments in Artificial Intelligence (AI)- and Big Data-powered tools — both existing and emerging — are predicted to have a revolutionary effect on the insurance industry in the near future. These technological advancements have begun materialising at challenging times for the insurance industry in Australia, with natural disasters adversely affecting the industry's profits, and a number of legal and regulatory changes coming into force, originating from the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry recommendations. The Royal Commission has uncovered the evidence of insurers' unethical, and often unlawful, practices, that adversely affect consumers, and we believe that the use of AI- and Big Data-powered analytics by insurers, especially for the purpose of underwriting of contracts, may further exacerbate consumer harm. The focus of this article is the Corporations Act 2001 (Cth). We ask if ch 7 provisions can help address issues that arise in the context analysed, focusing especially on rules that require insurers to provide their services efficiently, honestly and fairly, prohibit unconscionable, and misleading or deceptive conduct, as well as on other obligations of Australian financial services licensees, including the new product design and distribution obligations.

Indigenous corporations and accountability — The evolution of  
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The Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) ('CATSI Act') has been enacted over a decade ago with the aim of helping Indigenous people to set up Indigenous

corporations to run their businesses. Most of these registered entities are not-for-profit organisations: they play an important role as they provide essential services to their communities. In view of the current review of the CATSI Act, this article revisits the accountability push that resulted in the introduction of directors' duties in the context of Indigenous corporations. These duties ended up reflecting to a large extent the mainstream corporate legislation, the Corporations Act 2001 (Cth).

The article highlights the evolution of the duties imposed on directors of Indigenous corporations. The review further illustrates that more needs to be done to ensure that the duties are culturally appropriate. Further, building capacity should become a key function of the Office of the Registrar of Indigenous Corporations. In alignment with the spirit of the original CATSI goals, this function should trump the need for Western standards of accountability that may impose onerous burdens on Indigenous corporate Directors. This initiative would enhance the management of Indigenous corporations and help close the economic gap between Indigenous and non-Indigenous people. An emphasis on capacity building could be seen as an appropriate structure of support rather than constructing a potentially punitive process.

## The protection of corporate communications — What does Australia's High Court say?

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Several years ago, an article in the Australian Journal of Corporate Law focused on Australian High Court authorities describing the precautions that should be taken so that a corporation's legal professional privilege attracted the wide ambit of protection it could confer upon corporations in respect of their employment of in-house lawyers. The thrust of this article was that these precautions required that in-house lawyers must be giving advice and providing other legal services to their corporations in the proper performance of functions attaching to their legal professional capacity; and, accordingly, it seemed prudent for corporations to take care that their in-house lawyers did not become exposed as 'officers' of their corporations. Two relatively recent High Court decisions provide important guidance as to what is required to prevent in-house lawyers, and with the increasing corporatisation and commercialisation of the legal profession, possibly even external lawyers, becoming exposed as corporate 'officers'.