

# AUSTRALIAN BUSINESS LAW REVIEW

Volume 36, Number 1

February 2008

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## ARTICLES

### **The cardboard box cartel case: Was all the fuss warranted?** – *Caron Beaton-Wells and Neil Brydges*

The ACCC's legal action for price fixing against the giant cardboard box company, Visy, and its billionaire owner, Richard Pratt, has captivated the media. This article investigates the significance of the case from a competition law enforcement perspective, examining various aspects of the Federal Court's decision with respect to penalties, the implications of the case for the proposal to criminalise serious cartel conduct, and insights arising from the litigation by "victims" of the cartel in relation to private enforcement of the competition provisions of the *Trade Practices Act*. ....

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### **Reinterpreting the trade and commerce power** – *Dr Anthony Gray*

Reform of Commonwealth-State relations is high on the agenda of the new Rudd Labor Government in Australia. The author believes that one of the key areas that must be investigated is business regulation in our federal system. As recent reports from the Business Council of Australia and Access Economics found, Australia remains burdened with high levels of complex and often contradictory regulation that makes doing business more difficult than it might otherwise be, particularly for those organisations operating across State lines, as businesses increasingly are. The author submits that the past interpretation of the Commonwealth's constitutional power over trade and commerce has been unduly narrow, which has contributed to the regulatory complexity that Australia is now burdened with. The article argues that the High Court should interpret the trade and commerce power more broadly, and it could look to the United States experience with the equivalent clause in that country's constitution, for guidance. The article then considers some specific matters that might be regulated more efficiently with the suggested broader interpretation. ....

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### **Does "sustainable" investing compromise the obligations owed by superannuation trustees?** – *M Scott Donald and Nicholas Taylor*

Trustees of Australian superannuation funds are coming under increasing public pressure to take sustainability factors into account in their investment strategies. Despite the rhetoric, trustees have been loath to incorporate what are sometimes deemed "non-financial" criteria into their decision processes. This is entirely understandable. It stems from the conventional wisdom that a range of practical and legal impediments stands in their way. This article reviews that conventional wisdom and finds that it is often superficial and ignores recent developments in the way sustainable investing is framed. This implies that the way is open for superannuation trustees to embrace a more positive approach to sustainable investing; one that is consistent with the tapestry of obligations they owe under general law as well as the legislative backdrop. ....

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© Thomson Legal & Regulatory Limited ABN 64 058 914 668 trading as Lawbook Co.

ISSN 0310-1053

Typeset by Lawbook Co., Pyrmont, NSW

Printed by Ligare Pty Ltd, Riverwood, NSW