AUSTRALIAN BUSINESS LAW REVIEW

Volume 48, Number 4

2020

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Might Superannuation Trustees Owe a Duty to Merge? – *M Scott Donald*

A succession of regulatory initiatives has promoted attention to "member outcomes" by the trustees of Australian superannuation funds in recent years. Taken to their extreme, these initiatives require trustees to consider genuinely and carefully whether the interests of their members would be better served if their fund was merged with another fund. This represents a fundamental departure from the general law on trusteeship. It also creates a variety of prudential and competition issues that ought not to be underestimated. 304

The Challenges of Industrial Revolutions: Luddism and Tax Reform – *Kerrie Sadiq and Bronwyn McCredie*

According to the Luddite movement, technological advancements made during each industrial revolution were destined to have a negative impact on society's development, with the current industrial revolution no exception. Contrary to this Luddite view, this article posits that by tracing the advancements and evolution of society during each of the three previous industrial revolutions, it can be demonstrated that the populace has reaped the benefits of technological advancements in part because of new and different means of taxation to raise additional revenue for spending on public goods and social welfare. This article proposes three discrete taxes on automation designed to redistribute income and ensure governments have the ability to meet rising demands on revenues by shifting the tax base from labour and expenditure to capital. Given the nature of the current industrial revolution, it argues that a shift in the tax base is necessary to reduce income inequality and moderate its impact on society. 318

The Frontiers of Restraint of Trade Litigation Protecting Goodwill: Policy, Principles and Practice – *Michael Tamvakologos*

A litigant seeking to enforce a goodwill restraint will encounter a raft of potential obstacles and issues. This article explores the history and evolution of goodwill restraints and their current treatment by Australian courts, including the likely reasons for the increased enforceability prospects of a goodwill restraint. It examines the six main lines of defence to an application to enforce a restraint. Particular attention is given to the defence regarding largely fact-driven issues concerning whether the restraint exceeds the bounds of reasonableness and cannot be saved by application of the common law doctrine of severance, or powers exercisable under the *Restraints of Trade Act 1976* (NSW). Further, given the nuances and discretion involved, restraint litigation provides fertile ground for tactical considerations to significantly influence the allocation of litigation risk between the parties, the outcome achieved and the remedy awarded. Some primary tactical decisions are addressed. 332

From Little Things Big Things Grow: Australia's Evolving Copyright Site-Blocking Regime – *Cheryl Foong and Joanne Gray*

Australia's website-blocking regime, introduced in 2015 and expanded in 2018, permits injunctions requiring internet service and search engine providers to block access to overseas websites that have the "primary effect" or "primary purpose" of facilitating copyright infringement. Furthermore, the injunction may be "adaptive" in nature – rightsholders may by agreement with internet service or search engine providers extend the injunction to apply to mirror locations online, without returning to court. In this article, we critically analyse the trajectory of this so-called "no fault" enforcement regime, and highlight the lack of transparency fostered by the regime. We challenge the conception of the regime as a form of proprietary protection and the resulting uncritical reliance by lawmakers on private ordering as a keystone of online copyright enforcement. Finally, we provide recommendations for addressing the flaws in the current design of Australia's copyright site-blocking regime. 352

The Australian and United States Approaches to National Security and Foreign Investment Regulation – *Nicholas Felstead*

Foreign investment is an area that governments seek to strictly regulate due to perceived and real threats to national security. Governments also acknowledge that a hardline approach to regulation can reduce the economic benefits of investment. Both the United States and Australia have foreign investment schemes that seek to create an environment that protects national security interests and encourages investment. Although the recent reforms to Australia's national security test are a step in the right direction, this article seeks to critique Australia's national interest test in the *Foreign Acquisitions and Takeovers Act 1975* (Cth), arguing it is too broad when compared with the narrower and more precise approach of the United States. It does so by comparing the regimes and looking in particular to the application on critical infrastructure. 367