

of Section 46 to dictate to Melway how to choose its distributors.”

The High Court held that Melway had adopted and maintained its distribution system for reasons including the following:

- the system provided for a regulated and orderly method of marketing and distribution;
- the practice of dividing distributorships along industry lines offered each distributor an incentive to maximise sales in his or her market segment; and
- Robert Hicks Pty Ltd's order would not lead to an increase in sales for Melway so there was no real financial incentive for Melway to accept the order.

These commercial justifications for maintaining the distribution system led to the conclusion that Melway had not taken advantage of its market power by refusing to supply Robert Hicks Pty Ltd.

The detailed consideration of “taking advantage” in *Melway* represents a significant departure from the earlier case of *Queensland Wire Industries Pty Ltd v Broken Hill Proprietary Co Ltd (“Queensland Wire”)* (1989) 167 CLR 177. In *Queensland Wire*, the High Court apparently regarded anti-competitive purpose as sufficient when coupled with substantial market power to demonstrate “taking advantage”. In *Melway*, the majority refused to overrule *Queensland Wire* but emphasised the importance of asking whether a company has actually

taken advantage of market power. This process should include consideration of commercial justifications for impugned behaviour.

Justice Kirby delivered a strong dissent to the majority decision, holding (in accordance with *Queensland Wire*) that “taking advantage” simply means “use”. He also emphasised that the touchstone of the *Trade Practices Act* is consumer protection rather than commercial imperative.

Despite Justice Kirby's dissent, the decision of the majority in *Melway* represents a significant boost to the right of companies to organise their activities in the most commercially viable manner, provided that they can point to commercial justifications for their behaviour.

making web sites accessible

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Web sites must be designed so that they are accessible to blind people, following a recent Human Rights and Equal Opportunity Commission Decision (**HREOC**) in the matter of *Bruce Lindsay Maguire v Sydney Organising Committee for the Olympic Games* (H/99/115, 24 August 2000). HREOC made international legal history in November 2000 by ordering the Sydney Organising Committee for the Olympic Games (**SOCOG**) to pay \$20,000 to a claimant in compensation for breaching the *Disability Discrimination Act 1992* (Cth) because their web site was inaccessible to blind people.

The decision is the first in the world where a web site provider has been found liable over an accessibility issue, sending a clear message to web site owners that they need to consider the many users who access the Internet.

In August 2000, HREOC ordered SOCOG to “do all that is necessary” to make their web site accessible to blind people, after they received a complaint that the site was not accessible to

blind and vision-impaired persons. When the hearing re-convened early in November 2000, the Commissioner found that SOCOG had not complied with the original order, and they were subsequently fined.

From a technical point of view, it is relatively simple for web site operators to avoid these problems. Web sites that rely on graphics and images without text labels (called “alt tags”), as the SOCOG site did, cannot be read by screen readers, which are devices that most blind and vision-impaired computer users depend on to access the Internet. In this regard, HREOC has issued advisory notes to assist web operators to design their sites in this fashion, so that they comply with the requirements of the *Disability Discrimination Act*. The guidelines are based on those of the W3C (World Wide Web Consortium), an international body responsible for creating standards for the Internet. The W3C have published a set of guidelines which aim to make web sites accessible to everyone. The view of HREOC is that if these guide-

lines are complied with, then the *Disability Discrimination Act* will also be complied with.

Inaccessible web design has the potential to affect a wide range of people. Over reliance on graphics and badly structured content can make web sites inaccessible to people with dyslexia if they have to read through pages of irrelevant material before they find the content of the page. Similarly deaf people, whose first language is sign language, do not read comfortably, and if there is a lot of technical information, then this may be a barrier. In addition, reliance on colour can also render web sites inaccessible to people who are colour blind. There are also accessibility issues for people with Parkinson's disease or cerebral palsy who have to be able to use a keyboard to navigate a web site.

HREOC's decision should be seen as a warning to web site owners that in order to avoid potential liability under the *Disability Discrimination Act* they must consider disability and accessibility issues when evaluating their web sites.