1. Privacy Matters

1.1. General

1.1.1. Because privacy matters mainly concern the CSA [as the greatest abuser of privacy in Oz] I could have included it under the Child Support Chapter, but it is probably too big already for the limited attention span of most blokes. And besides, it is not only a very important matter in its own right [or write] but also dovetails into the fact that if you insist on your privacy rights then 99% of the CSA abuses can not happen.

1.1.2. Perhaps the most important simple measure is never give the CSA [or the court for that matter] your phone number, and also only give your address as a Post Office Box. My "broken record" to thousands of blokes who ring me for help is "if the CSA rings you just say put it in writing and hang up". The message then goes on to say "the reason the CSA is ringing you is because what they are doing is not legal, but you have no proof of that if it is not in writing". Of course they never will put it in writing so they simply give up on marketing to you and try the next victim.

1.1.3. The extension [no pun intended] of that is that if you had not given your phone number to the CSA "voluntarily", eg by filling in a COAT Form, you could also say to the caller "please remove my phone number from your records or I will get an injunction under the Privacy Act [herein PAct] to make you do so. Of course most blokes have forfeited that right under the PAct via these words, eg in Principle 11:

> *Principle 11*
> *Limits on disclosure of personal information*
> *1. A record-keeper who has possession or control of a record that contains personal information shall not disclose the*

information to a person, body or agency (other than the individual concerned) unless:
[...]
*(b) the **individual concerned has consented** to the disclosure;*

1.1.4. To further explain, using the CSAAct, the **lawful** administration of the CSAAct is almost fully automatic where once a year the ATO computer passes your Taxable Income to the CSA computer, which then spits out a Notice of Assessment, puts it in an envelope and sends it to your [hopefully] PO Box, requiring almost zero staff at the CSA. In truth 90% of the staff are there purely as marketing/sales persons and their tool of trade is simply the telephone. They are no different in that respect from any of those annoying Asian tele-marketing people that phone you about mobile phones and "Lifestyle Dynamics" except that they are far better at it.

1.1.5. My broken record then says to bloke "if bin Laden hired these people as telephone terrorists he would not have to do any further training as they are already experts at it". Of course all these words of advice hit the bloke's testosterone barrier and are lost, and to prove it I was playing my broken record to one bloke and CSA called him on his mobile. He said to me I must find out what the CSA **wants me to do** so can I ring you back? Of course I said don't bother.

1.1.6. And so it is that blokes simply shoot themselves in the foot [and up that Latham place] again by their testosterone fuelled desire to "give the CSA a piece of my mind". The realisation only comes home to roost if the matter goes to court and every single word [ie consenting to information] is there in black & white in the attachments to the CSR's affidavit. As I said above, the CSA gets to **legally** know more about bloke's finances than bloke's own mother, but the clever thing is they achieve that by knowing more about bloke's testosterone than bloke's mother. It is just too easy.

1.2. Kafkaesque happenings

1.2.1. But as a prelude to the Kafkaesque case already mentioned in the previous chapter, the ongoing Kafkaesque nature of the men's groups initiative of Alby'll Fix It reveals that thousands of CSA victims "go in under FOI" to find out what the CSA has on their files about that particular bloke, only to find the sorry story that the CSA has everything they needed to keep them in a job, including whether bloke likes his eggs easy-over or Humpty Dumpty style, and every bit of information is "legal" because bloke told the CSA telephone terrorist. But it gets better as the CSA employee can take a break from terrorism [even bin Laden needs a break at Club Med every now and then] and relax by the copy machine as it devours a whole GUNNS native forest of paperwork about useless trivia, to be delivered to bloke on a semi trailer.

1.2.2. So without further dalliance, here is the case, as told in a polemic for Mr D. The case is G&G and is a child support case, but the polemic then leads to the Palmer case:

> *By coincidence the word Kafkaesque is draw from a Child Support case, G & G [2003] FMCAfam 326 at the FMS in Parramatta, that involved the CSR attempting to use [or rather **abuse**] the PAct in a **reverse** manner, ie to protect the CSR **from** the victim.*
>
> *In G & G Raphael said:*
>
> > *25. Doing the best I can with the figures before me and accepting much of the father's evidence about the earnings of bricklayers, which was not significantly challenged, I think that the father's earning capacity for the financial year 2001/2002 - 2002/2003 was around the figure of*

$47,000.00 which he gave to the Colonial in his finance application.

I am unable to see how the figure of $80,000.00 was reached. The CSA did not provide any assistance in this, and I note that ***it did not give the applicant clear explanation of how the figure was arrived at****. As the father says in his submission:*

"In seeking to establish the grounds for a departure, the father and the court need to look at the reasons by which the father was assessed at having a child support income of $80,000. At page 3.4 of the notice of decision, the senior case officer says:

`I am prevented ***for privacy reasons*** *for disclosing the evidence and consequential findings of fact which the officer to conclude that even as a sole trader Mr G had a child support income of $80,000.'*

That is, the father is before the Court seeking to prove that there should be a departure, that is prevented `for privacy reasons' from knowing the facts and assumptions upon which the assessment of $80,000 was made."

26. I would sympathise with the father being caught in this ***Kafkaesque*** *situation. It would seem to me that the inability of the child support authority to advise the applicant of why it made an assessment of a particular sum in his case would amount to "special circumstances" sufficient to warrant the inquiry permitted by s.117 of the CSA Act.*

Of course G & G was not a PAct application for relief but a departure under Div 4 of Part 7 of the CSAAct. The question arises as to ***have*** *any cases been heard in the FMS under the*

PAct? The answer is only the case of Palmer v Child Support Registrar & Anor [2003] FMCA 394 (19 August 2003), and it is no coincidence that firstly it was against the CSR [and a lawyer] and secondly was mounted by a Self Represented Litigant [herein SRL] with written Summary of Argument by the writer of this submission.

In Palmer, Bauman FM said:

> *12. Despite that invitation to properly consider the jurisdictional issue, the Applicant resolved to continue with the Application, indicating in his written submissions that:-*
>
> *"The response by the Second Respondent (herein "the CSA") argues that an applicant seeking relief under the PAct must first apply to the Privacy Commissioner. The CSA quotes certain section of the PAct contained within Part IV and the consequential enforcement procedures in Part V. However that pertains only to a person who chooses to take the free advisory path via the Commissioner as a first step to enforcement. In this case I have chosen to bypass that process (because I am sure of my grounds) and cut to the chase by going straight to court."*
>
> *13. The Applicant is **not** entitled to "bypass" the first step created for obviously sensible public policy reasons.*

*The decision was of course totally incorrect as the applicant **was** clearly entitled to bypass the Privacy Commissioner, via an injunction, per s 98 of the PAct, and it was simply an oversight on the part of the writer to spell out to Mr Palmer **how** to cut to the chase [and Mr Palmer never contacted the writer to discuss a possible appeal]:*

> *98 Injunctions*

> *(1) Where a person **has engaged**, is engaging or is proposing to engage in any conduct that constituted or would constitute a **contravention of this Act**, the Federal Court or the Federal Magistrates Court may, on the application of the Commissioner **or any other person**, grant an **injunction** restraining the person from engaging in the conduct and, if in the court's opinion it is desirable to do so, requiring the person to **do any act or thing**.*
>
> *[...]*
>
> *(8) The **powers** conferred on the court under this section are in **addition** to, and not in **derogation** of, any powers of the court, whether conferred by this Act or otherwise.*

1.2.3. So as the polemic hints, Mr Palmer never came back to me to discuss an appeal and it was some time before I found this case on the web, as the **only** PAct case reported from the FMS, but totally forgetting that it was one of my own cases. It was only recently while searching on my PC for the saved version of Palmer that the search found a directory [or folder if you must] in my cases directory and I discovered the polemic I had done for him some 5 years before. As you can see they did a mushroom job on him by misquoting the PAct [ie totally "forgetting" s 98] and having got away with that they did the obligatory "draconian costs order" as further disincentive and posted it on the web with flashing lights. And hey it worked [till now] as no more PAct cases were pleaded so at CSA, Telstra etc it was business as normal.

1.2.4. As a side issue I will refer to the case as Mr P so you will not know it was Mr Palmer from BB in NSW. Here we have a case about privacy so if ever there may have been a case where all the silliness of s 121 secrecy/privacy paranoia was appropriate then this was it. But they gave his name as Mr Palmer, and by my confirmation it is his real name [but I will call him Mr P]. Furthermore the silliness I have allowed myself above of saying

"that is not his real name" comes from the 1998 case of Costigan & Costigan & Costigan [unreported] which was an Enforcement case by CSA where a CSA lass swore the affidavit as to bloke's debt [of $150,000 would you believe], saying "I am Amy Wu but that is not my real name but I fear violence from Men's groups". Perhaps more amazing is that Barry J actually accepted her affidavit as fact. And so the silliness goes on.

1.3. What privacy is not

1.3.1. I will once again quote from a recent polemic, for Mr B this time per:

> *In my submission it is wise to firstly clarify what "privacy" is **not**. As seen in G & G hereabove, the CSR attempted to use the PAct to hide behind his own wrongdoings or shortcomings. That is not unique to the CSA but is used throughout the commercial and particularly the government world. A prime example is the "half pregnant" government/private entity Telstra. Whenever one speaks to a Telstra person on the phone one is put through the following routine:*
>
> > *"For privacy reasons we need to ask you a few questions before we can assist you"*
>
> *The querist is then asked questions such as their date of birth, and if the same as the Telstra database the phone call progresses to the next step [but regrettably rarely a solution to the subject problem]. Firstly, under the PAct principles, Telsta was not entitled to actually **know** the customer's date of birth. There may be some question of the customer needing to be over say 18 [but I don't think so] but if that was so then the PAct says Telstra only needed to know if >18 or <18. Secondly, at worst, what Telstra are doing is referred to as QS or TQM [expressions from the almost defunct "Quality*

Industry"] but in fact just plain and simple good business principles.

*In this way Telstra etc are doing the same as the CSR in G & G, which is firstly to impose upon the customer in order to check their own systems ["Quality Assured" or not] and secondly, in doing so, are obtaining information from the customer to which they **were not entitled**. Kafkaesque indeed, but the pity is that this practice is so entrenched that, save for one actually reading the PAct, one **assumes** that "privacy" is something 180 degrees displaced from the actual situation.*

*Because the main offenders using such devices **are** government agencies such as the CSA, it is no surprise that the government utilises a firewall [called the Privacy Commissioner] to take any applicant seeking relief under the PAct up the privacy version of the FLIndustry "Yellow Brick Road", spitting them out the back gate and claiming the courts have no jurisdiction [see Palmer herebelow]. In fact one might well conclude that Professor Parkinson was briefed to solve the child support debacle by using the same devices that have fooled the public for nearly 20 years under the PAct.*

1.4. How easy it is

1.4.1. Let me revisit the telephone question by way of a battle raging as we speak with Mr D, where I said above in the child support chapter:

*I will kill two birds with one stone by answering that with an example I just found from Howard's first reforms in 1999, the dreaded RICAT, while using the AIAct to explain why it too was an attempt to intentionally deceive, albeit that CSA was never really game to use it, save for a few cases. In fact Mr D **has a letter** from CSA this month of September 2007 which claims*

*that **RICAT is a dead parrot** and is replaced by CTP [which is Capacity to Pay] albeit that the **CSA sent Mr D the RICAT forms**.*

1.4.2. By the time Mr D asked for my help he had been whipped into a total frenzy by phone calls to him from CSA and s 161 notices to his accountant, but **not one thing** to Mr D in writing. So I insisted on the broken record of put it in writing and hang up, but we went one better and served a Notice on them to remove his number from their database or he would seek an injunction. Well blow me down they wrote back to say **it had been removed**. And as you can see, by forcing them to put it in writing they are painting themselves into a very small corner, with total confusion even about their own invented terms RICAT and CTP.

1.4.3. In fact they claimed to have attached "Schedule A" to explain where CTP might be in the CSAAct but it was not attached at all. Then if you check these at the CSA site [the Guide] both RICAT and CTP are in a list of "policy things" but there are no links to see what might have been in Schedule A. Yes indeed, they are totally aware of the illegality of their activities and have their escape routes mapped out, except they are rarely required to test them. But all of this frenzied activity/concern transfer **from** Mr D **to** the CSA was caused simply by forcing them to put it in writing. "To be continued!".

1.4.4. So I thought why not go one better and do a global "do not call" by getting CSA on the new Do Not Call Register. Of course one of Howard's firewalls said no, but at least the gummt is on notice as to the absurdity that a call to sell you Lifestyle Dynamics will be blocked but not a call from CSA to induce you to suicide. Here is the initial reply from the gummt, and note the final redirection to Howard's main firewall, the Ombudsman:

Thank you for your complaint with regards to the issues you have with the CSA.

The Do Not Call Register Act broadly defines a telemarketing call as a voice call made to a telephone number to:
- *offer, supply, provide, advertise*
- *goods or services*
- *land or an interest in land or*
- *a business opportunity or investment opportunity or*
- *solicit donations.*

The call you received from the CSA does not fit into this definition and as such does not fall under the jurisdiction of Australian Communications and Media Authority. If you have a complaint about the CSA it may be beneficial for you to contact the Commonwealth Ombudsman.

1.4.5. To add a comment on the degradation of the Ombudsman's Office under Howard, back in about 1994 I was listening to an ABC current affairs program hosted by that feminist woman with a mouth resembling a post box when she is on TV [I think it is Jennifer Byrnes]. She was interviewing the Ombudsman [who was a woman] who said by far the greatest number of complaints were concerning the CSA. Ms Byrnes donned her Greer gown and said "oh, those deadbeats trying to evade their maintenance responsibility to their child". But the "Ombudswoman" said "not at all, 90% of the complaints are made out".

1.4.6. So all that was back in the Keating days of JSCs, democracy, and with no firewalls to stop hot air in either direction. What a huge difference since! It is almost like Howard decided that honesty was a Y2K aberration and "fixed it up" for the new millennium.

1.5. What privacy is

1.5.1. So the message so far in this chapter is firstly read the PAct. It is not too long, or at the very least read the 11 Privacy Principles at s 14, but don't forget to read s 98 at the very end, so you can take the good work in Palmer, get past the firewall of the Privacy Commissioner and achieve "justice", or at least have evidence for possible further action as to Criminal Justice as I speculate below.

1.5.2. In my view it is both simple and important to firstly put into you own words what was done [eg for Mr D the CSA sent a s 161 Notice to his accountant] and then do a checklist of the 11 Privacy Principles to identify all the wrongdoings. Then kick arse by an application to the FMS [not sure which court in WA] seeking an injunction. If you wish to prove the firewall theory do an application at the same time [just send your same polemic for the court] to the Privacy Commissioner [whose template decision simply says the CSA can do as it likes] and for good measure to the Ombudsman [whose template decision simply combines the two CSActs and says it is OK]. But as you can see the injunction is totally separate from the firewalls. To repeat s 98:

> *98 Injunctions*
>
> *(1) Where a person **has engaged**, is engaging or is proposing to engage in any conduct that constituted or would constitute a **contravention of this Act**, the Federal Court or the Federal Magistrates Court may, on the application of the Commissioner **or any other person**, grant an **injunction** restraining the person from engaging in the conduct and, if in the court's opinion it is desirable to do so, requiring the person to **do any act or thing**.*
>
> *[...]*

> *(8) The **powers** conferred on the court under this section are in **addition** to, and not in **derogation** of, any powers of the court, whether conferred by this Act or otherwise.*

1.5.3. So the logical pleading is firstly that the CSA cease the particular conduct [probably in the plural] which you established in doing your checklist. In many cases that will be all you need. But the words in the legislation go on to use that quaint lawyer expression "any act or thing", which implies a very wide ambit of discretion as to actions on the part of the court. However those words are not really couched in the form of a sanction [eg, see s 112AP contempt of court under FLAct], but essentially it is open slather virgin law territory where the rules say "you no ask, you no get". So moral is ask away.

1.5.4. But it may be a little silly to ask that the CSR receive 20 lashes of the Cat & 9 tails by this Act. Indeed it would seem that this is time to remember KISS and I would put it to you that in most cases the situation is that the CSR did a deem & destroy on you so you can identify exactly how much your payments increased [eg $10,000]. Under the PAct you are really seeking a declaration that the snooping the COAT did was illegal, and using **that** as a big stick to get a further declaration that the COAT was therefore illegal, so it is set aside, you revert to the legal assessment and get $10,000 credit on your CSA Full Transaction Statement [plus refund of any penalties].

1.5.5. Now I feel sure that this very situation was just one reason that Daryl Williams set up the FMS with so many "cross jurisdictions" so that such matters could be all settled in the one brief hearing, and I gave the example above of how Bryant CFM did just that in W & C [2002] FMCA fam 166. That is [or was] the good news. The bad news is I am just as certain that the reason Howard **replaced** Williams with the kiddie chucker from Tampa was to **block** any access to justice. It should be easy to see that in the above example, if the political will was to obstruct justice by

devices, cleverness and obfuscation [as it certainly is under Howard], then such a combined PAct, CSAAct matter could be drawn out in the court or courts to match the devices Howard uses in the CSA, prompting the famous judgment of Kay J in Kness & Kness about the COAT, per:

> *22. One passing comment and final matter is that this whole process contained in the legislation appears to be* ***amazingly cumbersome*** *and may have the effect of* ***grinding the parties down to a point where they find the whole exercise overwhelming****. It is dealing with the day to day needs of people to survive economically. It is dealing with the needs of the parent who has the care of the children to provide for the children. It is dealing with the strained financial circumstances of the other parent who is often trying to set up a new household and has to stretch funds which previously were available for one household to meet the needs of two. In many cases there is no capital base and no savings to draw upon.*
>
> *23. The processes built into this legislation are*
> - *an assessment,*
> - *a departure application,*
> - *the consideration of the departure application involving hearing both sides,*
> - *an objection which has 28 days to be lodged, 28 days to be answered and 60 days to be considered.*
>
> *This allows four months minimally to go by during which time the payer, lulled perhaps into a sense of false security, spends money for which he/she is subsequently found to be liable to the payee, or alternatively the payee spends money for which she/he is subsequently found liable to the payer, and there is no money to make up the backlog. It has to come out of future moneys needed to be spent on the children or on self-support.*

24. That can then be compounded with an application to this Court and its appellate processes. This is legislation for people who need immediate attention to their economic problems. It is hard to see the reason for such ***monumental bureaucratic hurdles*** *as are created by Part 4B [sic].*

1.5.6. People I help obviously ask me as to their chances in litigating their matter and I answer by saying "in a just and democratic country, as Oz **used** to be, and with proper separation of powers between gummt and courts, as Oz **used** to have, your chance would be ["but say to you"] 80%, but **this is not it**. But never let that put you off.

1.5.7. The start and end point in CSA privacy abuses is Privacy Principle 1, which states:

Principle 1
Manner and purpose of collection of personal information
1. Personal information shall not be collected by a collector for inclusion in a record or in a generally available publication unless:
(a) the information is collected for a purpose that is a ***lawful*** *purpose* ***directly*** *related to a* ***function*** *or activity* ***of the collector****; and*
(b) the collection of the information is ***necessary*** *for or* ***directly related*** *to that purpose.*
2. Personal information shall not be collected by a collector by ***unlawful*** *or* ***unfair*** *means.*

1.5.8. So if your concern is the CSAAct then check out what information the CSR **needs** to have about you. You will find that he needs your tax file number so that his computer can access the Tax Office computer, but only to get your last assessment. So the reason there is such a big stink by the so called men's groups about the CSR **having** your tax file number [which after all is a creature of the Tax Office's creation] is simply a red herring

required by Howard in order that the men's group continues to be funded [as Bazza revealed to the Senate Committee above]. He also needs an address to send the CSA Notice of Assessment. But that is it, save for a few exceptions, which you can generally avoid.

1.5.9. The first exception is if you don't put in your tax "on time", and "on time" is very flexible since the 1999 amendments, changing Child Support Year to Child Support Period. All I would say is if you are so foolish as to invite attention by not attending to your tax return then you deserve all you get.

1.5.10. The second exception is if your income has fallen by at least 15% and you are seeking relief by an election [misnamed an estimate by CSA] under s 60. But even then the CSR still only needs your address in the rare case under s 63B that Buttercup tips him off that your election might not be on the up and up, per:

> *s 63B(2) If the person **complies** with section 161 (in relation to the notice), the Registrar may **amend** the assessment to affect the annual rate of child support payable by or to the person for the days in the child support period **on or after** the day the person complies.*

But even then, there is no drama as you are allowed to change your election every two months, and besides, even if you were fiddling the books the amended assessment is only from that time and there are no draconian "things" legislated to punish you. I will return to s 63B.

1.5.11. The third exception would be if Buttercup applied for a COATing under Part 6A [and I won't even entertain the insanity of bloke himself **asking** to be COATed]. In that case your path is to either do nothing [as you will be Deemed & Destroyed anyway, so why **consent** to giving your private information on their lousy form] or sit down and do a **dual purpose** polemic as if it was to be a proper "departure hearing" under either Part 6A or Part 7, and

send that to the COAT. Never forget that it was that simple strategy back in 1998 that put COAT Riethmuller into a tailspin and caused Howard, after trying, *inter alia*, buying off men's groups, putting Minister for the Status of Women in charge of MensLine etc, to have no option but to call in "the cleaner" Professor Parkinson to block access to courts.

1.5.12. So the result is that we never get past your PO Box number as being the **sum total** of information bloke is required to give about himself. As to information others might be permitted to give about you, for example your accountant after receiving a s 161 notice, the same applies, per:

> *161 Obtaining of information and evidence*
> *(1) The Registrar may, where it is reasonably necessary **for the purposes of this Act**, by written notice, require a **person**:*
> *(a) to **give** to the Registrar, within a reasonable period (being a period of not less than 7 days), and in a reasonable manner, specified in the notice, **such information** as the Registrar requires; and*

1.5.13. You then check out the CSAAct to find any such purposes and save for s 63B above [which we have already spat out] there **are** no purposes, meaning all of the "scanning all government and related databases" to gather "evidence" to Deem & Destroy you is **totally illegal**. While I know you will be screaming from your Stockholm Syndrome bunker that the Guide says the CSR can do as he likes, both the PAct and CSAAct are about L-A-W Law, and not Alice in Wonderland.

1.5.14. But on the other hand, even if you prefer to simply take it up the arse, the CSA is **vitally aware** of all these "impediments to anarchy". That much is clear from their various "actions & inactions", some of which I have mentioned in this book. So if you are not prepared to read my lips, just try to file & serve a

privacy application in the FMS and you too will probably get a phone call from the **actual** Australian Government Solicitor himself. And I hope you just treat him as any other abuser and say "put it in writing" and hang up [after explaining you will get an injunction if he does not remove your number from his database].

1.6. There are two swords

1.6.1. While I am talking here to s 161 it is worth comparing it to the thin thread that holds up the Sword of Damocles fiction that Part 6A allows a "change of anything", ie s 75(5). Similarly s 161 is the thin thread that holds up the Sword of Damocles fiction that the CSA can invade your privacy past knowing your PO Box number. But of course the s 161 thread is even thinner because no court has even said "perhaps it is saved by ...", as Kay J said for s 75(5). I hope you then agree with me that s 75(5) is simply "how's yer father?" semantics, per:

> *(5) Except as otherwise expressly provided in this Act, every amended administrative assessment is to be taken to be an administrative assessment for all the purposes of this Act.*

1.6.2. But what about s 75(4), also never mentioned in court? It says:

> *(4) Where a provision of this Act **expressly** authorises the Registrar to amend an administrative assessment, that provision **does not** by implication **limit** the power of the Registrar (whether under **this** section or **otherwise**) to amend the assessment.*

1.6.3. So I will run this up the flagpole for your consideration. Firstly I will explain that any "executive" provision in an Act **should** have a head of Power, but only **one**. That is axiomatic as more than one would simply result in total confusion at to what power

the court actually had. Agreed so far? Now s 75 is a type of "in case we forgot to say, coverall provision" [and maybe as such might be said to make the grade in the Claytons Head of Power stakes, but definitely not "expressly"]. My view is that s 75(4) accepts that possibility so wants to make it clear that if there is **another** more **expressed** Head of Power, then use **it** and forget about s 75. For example the legislation already **has** a Head of Power to say if kid is 18 then assessment **ends** [subject to having completed school of course per the 1999 amendment], so s 75 says if the CSR **forgot** to end it, then we give him a second chance by **reminding** him under s 75, and no hard feelings.

1.6.4. That being the case [I hope you agree], in my view by any measure, be it double edged sword, Gander principle or "fair's fair", it **must** work the other way too. That is to say if there are some 16 instances [as detailed by Mr B to Watt J] in the CSAAct to say Part 6A **is** simply advisory [or **not** executive, take your pick], or in other words there is no **express** authority, then you can't just grab the **non express** Claytons s 75 and say "this will do". So we just once and for all snipped that thread on the Part 6A Sword of Damocles.

1.6.5. But let's extend that to s 161. It does not have a similar clause, even though both sections were made at the same time in 1989. That is to say there is no subsection to say:

> *s 161(x) Where a provision of this Act **expressly** authorises the Registrar to **snoop** on a person, that provision **does not** by implication **limit** the power of the Registrar (whether under **this** section or **otherwise**) to **snoop** on people.*

1.6.6. The washup is that because it is **not** there, you are permitted to search the CSAAct for any **express** instances of s 161 [ie **for the purposes of this Act**], and you will find only s 63B, which I explained above is quite harmless. Moreover the "person" in s 63B is **you**, so even though a "person" under some sections of

the CSRCAct might be your accountant, that is **never** the case under the CSAAct.

1.6.7. None of this is a big deal for several reasons, but I mention it mainly as a further example of what Kirby J refers to as "thinking reflectively", which he says is beyond most lawyers. But if you want to "join me" in kicking lawyers' arses, you need to hone your skills in making submission, especially on "virgin law" matters where lawyers have purposely avoided letting the light of day shine on a bloke/taxpayer friendly statute.

1.6.8. Those several reasons are firstly, even if s 161(x) **was** in the Act, meaning you could search to Act for any permission at all to snoop, then you **still** can't find it. Secondly, the "clever" attempt by Howard/Parkinson to insert Clause 4 into the Amendment Act [which device I clobbered] was a direct **admission** that s 161 does not "have the balls" to do the type of snooping envisaged [or envisioned if a Bush fan] by the Howard/Brough [pronounced Bruff as in Gruff] deadbeats to the grave initiative.

1.6.9. Thirdly is more interesting and I will return to it below. It says that after Divorce Doctor knocked Clause 4 overboard for a six [to mix two Howard metaphors] the CSR had to go back and dust off s 161 and use it to induce deadbeats to their graves. Well back in 1989 the legislators were a tad worried about what their feminist masters were asking them to draft in s 161, so they simply gave themselves a copout via:

> *s 116(3B) Subsection (3) does **not** apply if the person has a **reasonable excuse**.*
>
> *s 116(4) It **is** a reasonable excuse for a person to refuse or fail to comply with a requirement under subsection (1) if complying with the requirement **may tend to incriminate the person**.*

1.6.10. In the vernacular, bloke could drive a Mac Truck through this one, but in the Mr D case the CSR was not game to tell the accountant about his rights, as he [correctly at law] **used to do, prior to 2006** to make the accountant aware of those rights. The accountant would formerly look at that and ring his client [ie bloke] and ask if bloke would have his arse if he complied with the s 161 request. Bloke would say "you bet your sweet arse bean counter, and if you do you will be my **ex** bean counter".

1.6.11. The point is that the words "may tend to" require but a "hunch", and there is no comeback by the CSR [hence the Mac Truck comment]. Knowing that, the latest demands, as evidenced by the letter to Mr D's accountant, not only do not include that advice but say "you can **assume** that this request is legal". Now that is like the two foxes and the chook discussing the dinner menu, and shows just how desperate Howard has become in his dying moments of power.

1.6.12. The problem I see for those [eg the CSR] going along with these instructions "from the Berlin Bunker" is that we are getting well into the area of **criminal exposure**, no matter how much asbestos is used in the firewalls.

1.7. Criminal matters

1.7.1. In case you are not reading the tea leaves I will repeat that, in order to avoid drive-by shootings and "men using fertiliser" as per the Howard fridge magnet, the main purpose of this book is to pass on to any bloke interested, my experiences with the FLIndustry. In that context I offer the following comments on matters I have not explored in any detail, and probably won't.

1.7.2. As seen, I have *inter alia* busted the Howard firewall of the Privacy Commissioner being able to block your access to a court. That means you can now Get out of Jail, pass GO, Collect

$200 and move on to get an **injunction** to **stop** your favourite privacy terrorist [probably the CSR] from "doing/having certain things privacy wise". So whilst that is warm & cuddly, you may well ask [by reference to the chapter on Child Matters] if this is just a **Pyrrhic** victory, involving a slap on the wrist with a wet tram ticket and a copy of Chapelle Corby's book.

1.7.3. Well yes, that would seem to be the "outcome", and as we know from Don Watson, the only thing of importance, at the end of the day, going forward, towards closure, **is** outcomes. But I am thinking you "really wanted something different", eg nailing the arse of the CSA. Correct?

1.7.4. So let me give you some breadcrumbs for your Frodo Journey as you bound out of the Stockholm Syndrome bunker looking for arses to nail. It all started by coincidence as I went back to the Objects at the start of the CSAAct to quote the embedded privacy Objects at s 4 and I saw s 4A.

> *4A Application of the Criminal Code*
> *Chapter 2 of the Criminal Code applies to all offences against this Act.*

1.7.5. That started me thinking [but only on the surface] about what that short but sweet amendment from 2001 might mean, and the reason behind its inclusion. My provisional conclusion is that it followed the work of Dr Robert Kelso after his own "adventures" with the CSA. Dr Robert explored a different but parallel path to me, which was the Common Law criminal aspects of misfeasance, via such High Court authorities as Breckler, Mengles etc [from memory].

1.7.6. Now I have read the Amendment Act that inserted s 4A into the CSAAct [and some **ten other** Acts, **including** the PAct], but I have not [as yet] seen any EM to explain the reason **for** such sudden "justice concerns". After all, if the Criminal Code applies

from 2001, then how was it possible it was "forgotten" before then. It seems to me there is "something going on" here. And here is the similar amendment to the PAct:

> *3A Application of the Criminal Code*
> *Chapter 2 of the Criminal Code (except Part 2.5) applies to all offences against this Act.*
> *Note: Chapter 2 of the Criminal Code sets out the general principles of criminal responsibility.*

1.7.7. So my thinking continues from Dr Robert's words to me "I **will** get my money back [I think it was $66,000] at some stage, but in the meantime I just want to see them swing by the balls". It seems intellectually responsible to conclude that the gummt gave him his money back, but to allow "scrotum relief" for the CSR they made such "offences" only criminal offences **from** that date in 2001 [ie the problem about David Hicks], hoping that nobody else might come along later to make use of the provisions. And of course we see that on the "non criminal" complaint side my various applications under s 110 then caused Howard/Parky to zap such sections and block access to [family] courts while giving us a whole new quango of blood sucking [but non Brandy approved] lawyers at the SSAT firewall.

1.7.8. But it would seem that these 2001 amendments open up a whole new ball game if you wish to explore it. My understanding is that you would be seeking relief in The Federal Court [or perhaps a state Supreme Court?], but that is up to you to discover, and I would continue to say that, even though this is a bit outside of the FLIndustry, I still think any criminal lawyer would close ranks with the CSR etc, meaning it would need to be you as a SRL.

1.7.9. But before leaving the matter I will just say that, as for the Kafkaesque case, the CSA would surely argue that "offences against" means offences **by** bloke, and not by them. In my view it

is hard to see how bloke could in fact offend, save for providing wrong information in a s 161 notice under s 63B, but there are **hundreds** of ways the CSR could and **does** offend the Act. So if this had **only** been inserted into the CSAAct I am sure such a Nuremberg argument ["I was just doing my duty in the best interest of the kiddies"] would be made and probably accepted by a court.

1.7.10. But it is almost impossible, in a "CSA dispute", for bloke to offend against the PAct. Therefore in my book that not only enhances the argument that the CSR can be found to have offended against the CSAAct but also gives you two strings to your bow. For example the charge would be that the CSR issued a s 161 notice that was not "for the purpose of the CSAAct" [so bingo, offence #1] and in so doing he then offended such Privacy Principles as you may care to enumerate at s 14 of the PAct. But of course your first exercise would be to find the Explanatory Memorandum to Parliament for the Amending Act.

1.7.11. In conclusion this is the missing link to give the PAct some real balls, but it is up to you to cancel your membership of your men's group, get out of the bunker and get serious about litigation. As a final hint, going back to the victory of Mr W where Bryant CFM found the CSR to have made an invalid registration under the CSRCAct, it would seem we could have then taken that further as there was also a new s 3A inserted into the CSRCAct in 2001. What **did** happen was the CSR simply thumbed his nose at the court order, so we applied under s 112AP of the FLAct, which is also a criminal offence for "flagrant contempt, in the face of the court, of an order".

1.7.12. Although Mr Mutton the Regional CSR at the time escaped "on a technicality" I can assure you that the whole industry took it seriously. That is because Mr Mutton's counsel from the AGS said just that, ie "Mr Mutton is taking this very

seriously", but you won't know that as the case is not on the web of course.

1.8. Late Breaking News

1.8.1. The Law Reform mob [see AUSTLII home page] has announced a major inquiry into the PAct operation. It is no surprise to me that one is taken down the Garden Path, per:

> *As Discussion Paper 72 is a very large file, you may wish to start by reading the overview of major issues and proposals*

1.8.2. The overview has no mention at all about injunctions, but of course as I did not come down the Thames in the last kipper tin, I did not fall for that Howard trick.

1.8.3. Trick #2 is that their Y2K Freaks have padded the "very large file" to make it 17 mb, but still no worries to me. But when I tried to download it, it stops at 2.2 mb every time. Still not put off, so I email to complain, and get sent a CD, but trick #3 is that each chapter is a separate file [about 50 files], so one can not do the normal Adobe search for "injunction".

1.8.4. But of course Y2K Freaks have never fooled me so I used other means to finally locate references to "injunction", and like wow, no wonder the court in Palmer/Howard and the whole Shootin' Match wanted to keep this in Mushroom Corner. Here is the vital bit:

> *46.24 In IP 31, the ALRC asked whether the Privacy Act provisions for obtaining injunctions are adequate and effective. The OPC expressed concern about the **breadth** of the standing provision in s 98. The OPC suggested that 'it could allow **a party with no interest** in the privacy of the individuals in question to seek an injunction that may, as a consequence,*

*impact on **how an agency or organisation interacts with that individual**'. The OPC recommended that s 98 be amended to include a **more rigorous test** for standing. In contrast, another stakeholder described the ability of nongovernment organisations to seek injunctions, because of the provision for open standing, as a 'theoretically valuable means by which **contesting interpretations of principles** could be resolved'.*

1.8.5. As I have said above, Mr Palmer was entitled to "bypass the Howard Firewall" of the OPC via an injunction under s 98 [but the FMS ruled incorrectly], but what I had not picked up on is that you [dear bloke] or I as simply J Doe citizens could have sought such an injunction on behalf of Mr Palmer, or **on behalf of all 1 million CSA victims**.

1.8.6. So even as an old dog in reading legislation I had missed this point. The truth is I was kinda complacent, having actually found s 98, hidden away there in the PAct, and then finding that bloke himself was able to bypass the OPC and simply seek an injunction. But I had made the fatal "ASS-U-ME" mistake, being content to get off at Redfern. The words of s 98 are:

<u>98 Injunctions</u>

*(1) Where a person has engaged, is engaging or is proposing to engage in any conduct that constituted or would constitute a contravention of this Act, the Federal Court or the Federal Magistrates Court may, on the **application** of the Commissioner **or any other person**, grant an injunction restraining the person from engaging in the conduct and, if in the court's opinion it is desirable to do so, requiring the person to do any act or thing.*

1.8.7. So I was reading this as "any person affected by the privacy abuse" and not simply "any other person". So it is very

easy to see why the OPC Firewall wants a "more rigorous stance". But dear bloke you have time to make **your** submission to this mob [as I will] to say "leave it alone", but moreover **at present** you have **open slather** to seek an injunction based upon any breach against any person. In essence this is the equivalent of a Class Action, but without even needing to know the names of the others you seek to help. Go For It!

1.8.8. Oh yes, if you thought I was Whistlin' Dixie about Mr Palmer's "bypass route", ie the porkie told by the court, well here is the description of the injunctive power in the report, hidden **real** deep.

> *46.22 Two features of the injunctions power are significant. First, it does **not** only concern enforcement of determinations. It is a **freestanding provision** that deals with any contravention of the Privacy Act. Secondly, the 'standing' requirement is **relatively easy to satisfy**—the application may be made by the Commissioner 'or any other person'.*