

1. Privacy Breakthrough

1.1. General

1.1.1. Because of my abhorrence of the ever increasing level of privacy invasion by "Big Brother" and the ever decreasing concern by a "Dumbed Down Society", I had offered the entire Chapter on Privacy as a FREE EXTRACT at the website.

1.1.2. I then tendered my submission to the Howard instigated Law Reform Commission Inquiry into Privacy Matters simply as the self same Privacy Chapter from my book. The silence from that Inquiry since Howard was deposed may well mean it is a Dead Parrot, and given the sinister intentions of Howard that would be fantastic.

1.1.3. As seen, when I simply asked the question at the Howard Cash for Comment site as "have we all made our submissions to this Inquiry?" the post was put into "a s 121 MothBall" and I [as "Nicholson"] was **ejected** from the Cash for Comment site. So to use the term of Kirby J in Luton, "minds [and Minders] must have been turned".

1.1.4. If we FastForward to June 2008 there is a challenge to the "powers of the CSR" via the PAct. To use the present Family Court paranoia of renaming cases I will just call the case Agent99 vs the CSR. Also for the present I will refrain from entering into the detailed issues involved in the case.

1.1.5. What I will reveal at this early stage is the lawyers [from AGS] representing the CSR [ie the CSA] have totally backed down on their previous stance to say bloke must first complain to the Office of the Privacy Commissioner [OPC] rather than go direct

to a s 98 Injunction. And as we know the OPC was Howard's Numero Uno Firewall, so all complaints ended there.

1.1.6. As I mention in the Privacy Chapter, hidden away very deeply in the Reform Paper was a pleading from Howard [via the OPC] to stop access to court, in exactly the same way as Parkinson's Curse [via **that** Inquiry] blocked access to courts for Child Support, per:

*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.***

1.1.7. To return to Palmer case, the AGS in that case pleaded [and the court agreed] that:

*4. **The Registrar raised**, as a discrete preliminary legal issue, whether this Court had jurisdiction to hear the Application.*

Jurisdictional Issue

*5. Section 36 of the Privacy Act provides that an individual **may** complain to the Privacy Commissioner (the Commissioner) about an act or practice that may be an interference with the privacy of the individual.*

6. If a complaint is lodged under section 36 with the Commissioner the Commissioner shall investigate the complaint (section 40) or may decide not to investigate , or not to

investigate further a complaint under section 36 if the Commissioner is satisfied that:

[...]

If the Commissioner investigates the complaint the Commissioner is required to make a decision under section 52 of the Privacy Act.

7. The Applicant concedes that he has made no complaint to the Commissioner under the Privacy Act. As a result, no determination has been made by the Commissioner.

8. Section 55A of the Privacy Act gives the Federal Magistrates Court jurisdiction to grant an order for the enforcement of a determination made by the Commissioner under section 52 where that order is sought by the complainant, the Commissioner, (if the determination was made under section 52 Privacy Act), or an adjudicator for the approved privacy code under which the determination was made (if it was made under an approved privacy code). The hearing is by way of hearing de novo (section 55A(5)).

*9. As there has been no determination by the Commissioner under section 52 of the Privacy Act then by operation of the Privacy Act the Court **does no have jurisdiction** to investigate this complaint.*

*10. For these reasons the Application is **fatally flawed**.*

1.1.8. But at the commencement of this new case it was said:

*HIS HONOUR: Sorry. Section 98 of the Privacy Act, it's **not normally a direct right to the court though, is it?***

*MS TULLOCH: No, it **is**.*

HIS HONOUR: It is?

*MS TULLOCH: It **is**.*

*HIS HONOUR: Direct right of recourse to the court. **Yes**.*

*MS TULLOCH: Yes. You can go through the court on that, and **this court does have the power** and the Federal Court has the power.*

HIS HONOUR: Yes.

*MS TULLOCH: He is entitled to **come directly here for that application**, but for the fact that we say he has already made that application and it's been determined previously by another federal magistrate.*

1.1.9. Now I won't go into detail regarding her pleading of the matter being already heard, but the important point here is that the CSR [via the AGS] has now "**changed horses**" on the pleading in Palmer that Mr Palmer could **not** "bypass the OPC".

1.1.10. It matters not if this change of horses was prompted by the change from Howard to Kevin '07, the revelations in this book or the Tooth Fairy, but it certainly renders the Privacy Inquiry quite pointless, as the cat is out of the bag as to one's right to their day in court. And wow, what a smorgasbord of complaints are out there about the CSA alone, before even getting to the Telstras etc.

1.1.11. And even though no one in their right mind would now bother about the OPC, to keep the record straight s 54, leading to s 55A says:

Division 3—Enforcement

54 Application of Division

(1) This Division applies to a determination made under section 52 after the commencement of this Division, **except where the respondent to the determination is an agency** or the principal executive of an agency.

1.1.12. The correct section is s 57, per:

Division 4—Review and enforcement of determinations involving Commonwealth agencies

57 Application of Division

(1) This Division applies to a determination that is made under section 52 and **has an agency**, or the principal executive of an agency, as the **respondent**.

1.1.13. So while there may have been some esoteric legal reason as why the Child Support Agency was not really an agency, the CSR affidavit came clean and said it was an agency, so Palmer was **doubly** wrong, or a right Barry Crocker.

1.1.14. So we can now safely put Palmer [and several other cases *following*] out to graze along with Brough/Tillmans and the "Chase Deadbeat Dads to their Graves Initiative".

1.1.15. But wait a moment! Am I hearing the patter of Kevin '07 paws via a new Initiative via the Minister for Human Services Joe Ludwig. Admittedly his words seem to be [sort of] concentrated on legal chasing under the CSRCAct but as we saw under Howard the investigators very quickly started to snoop on

tax returns, bank accounts etc, **none** of which is allowed under the CSAAct.

1.1.16. Hey Joe, you better keep an ear to austlii on this case before compounding the sins of the CSA.