0.1. The Sweetest Victory of All

0.1.1. As the time gets nearer and nearer in April 2008 for the very very long awaited new formula [albeit with the sting in the tail already starting to raise its ugly head (or tail?)], I have taken a glance or two at the r & s [repealed & substituted] Part 5 of the CSAAct, and to my absolute delight it **finally admits** that from 1992 to 2008 Part 6A was used illegally by the CSA to **change assessments**.

0.1.2. On a more sombre note however it will not bring back the 15,000 or so good fathers who committed suicide as a direct result of Deem & Destroy and the like by the evil COAT Empire.

0.1.3. I have explained the situation in great detail above about the Sword of Damocles of no Head of Power to change anything, as well as the "laments" by various judges about "other matters" that "would need to be added" to make the COAT operation [semi] legal.

0.1.4. To put this in KISS terms, imagine the COAT as a drag car. It should have an engine as well as parachutes to act as a brake. Well the COAT vehicle not only lacked an engine [Head of Power] but it was trying to race with its parachutes [the Laments] fully open. So the new Part 5 **retracts** the parachutes to enable the vehicle to run freely. Of course it still has no **proper** engine but still relies on a pesky little "squirrel in a cage" at s 75 for the motive power. Not even Howard would be so bold as to suddenly insert Part 6A into s 75, however given that he spent somewhere close to a billion dollars of our money to bolster the CSA, there is ample "lawyer power" and hot air to push the vehicle at supersonic speed, and continue to say "who **needs** to act legally when you are making lots of money".

0.1.5. But to explain the victory, let's return to the s 35 lament in Lightfoot and Hampson (1996) FLC 92-663 (Fogarty, Kay and Purvis JJ), per:

> *31. Thus it [s 35] provides three exceptions to the pervasiveness of the administrative formula in determining the quantum of liability for and entitlement to child support in cases which fall within its provisions. They are modifications under Div.2 of Part 5, a departure order under Div.4 of Part 7, and a child support agreement.* ***To those now needs to be added the capacity of the Registrar through a review officer to depart from the assessment under Part 6A****.*

0.1.6. So **Bingo!** after 16 years of uncertainty, s 35 will morph to s 35C on 1 July 2008, and Part 6A will be added, per:

> *[**old**] s 35 Application of basic formula to determine annual rate of child support*
>
> *This Division applies in relation to the assessment of child support payable for a child by a liable parent:*
> *(a) except to the extent otherwise provided in Division 2 (Modifications of the basic formula for certain cases); and*
> *(b) subject to any order made by a court under Division 4 of Part 7 (Orders for departure from administrative assessment in special circumstances); and*
> *(c) subject to any provisions of a child support agreement that have effect, for the purposes of this Part, as if they were such an order made by consent.*
>
> *[**new**] s 35C Application of Part to determine annual rate of child support*
>
> *This Part applies in relation to the assessment of child support payable by a parent for a child, subject to:*

> *(a) **any determination made by the Registrar under Part 6A** (departure determinations); and*
> *(b) any order made by a court under Division 4 of Part 7 (departure orders); and*
> *(c) any provisions of a child support agreement that have effect, for the purposes of this Part, as if they were such an order made by consent.*

0.1.7. And as one might expect with such a long gestation period the Howard/Parkinson/Ruddock Team was most divisive in the addition. Firstly the s 35 change was made under the cover of darkness of the wholesale "repeal & substitution" of Part 5 [s 35 to s 79] under the "excuse" of certain changes to the parameters of the CSA formulae. Secondly s 110, the original avenue for **appeal** against such matters was also repealed and substituted in 2007 [by 146 of 2006]. And thirdly the new s 110 not only removed the appeal path but it put an **18 month limit** on revisiting any "Changes of Assessment".

> *S. 110..... am. No. 140, 1995; No. 120, 1998; No. 194, 1999; No. 75, 2001 **rs. No. 146, 2006***

0.1.8. But after the same 16 years, s 75 remains **un-amended**, and there is also still no actual Head of Power **in** Part 6A to do anything but make an [advisory] determination. Therefore my submission from my side of the argument is that the **addition** at s 35 and the **non** addition at s 75 **must** be taken as an **admission** that the decision in Butler & Man [and Hendy] was manifestly wrong. And my further submission is that the clandestine and devious nature of the "firewalls" to avoid "Part 6A Compensation", which I mention hereabove, must give strength to those submissions.

0.1.9. But there are several more clandestine insertions of Part 6A by "The Cleaner" Prof Parkinson [please do a search

yourself as a Homework exercise] and one is even **sweeter** than s 35

0.1.10. In 1989 SubDiv B of Div 3 of Part 5 [ie elections, commonly termed estimates] allowed parents to elect to use an estimate of income and, if accepted by the CSR, the estimate "takes the place" of any assessment for the designated period. However there were two caveats legislated in 1989, firstly at the "front end" ss 59 & 60 say that a person may **not** apply for an election if a **court** has made an "income amount order", that term being defined in s 59. Secondly at the "back end", s 61 said that a **court** can make a departure order "in place" of the election. In my view both these provisions were simply logical and sensible "housekeeping".

0.1.11. Then in 1992, s 59 was amended to **include** Part 6A within the definition of income amount order. Also in my view that was most sensible and appropriate as Part 6A was **legislated** as "a first [advisory] step" before making a departure application to a court.

> *S. 59..... am.* ***No. 151, 1992****; No. 140, 1995; No. 120, 1998*

0.1.12. In my submission this amendment to s 59 in 1992 firstly totally disproves the implied suggestions of courts and the CSR that the Parliament simply "clean forgot" to go through the CSAAct in 1992 and add in Part 6A wherever it might be necessary to allow the CSR to **legally** use it as a "change of assessment". Secondly it clearly demonstrates within this single SubDiv that Parliament **must** have considered [and rejected] including Part 6A in s 61 [the back end] as well as **including** it in s 59.

0.1.13. Clearly, in my submission, there was no need to do so in s 61 if one accepts my stance that Part 6A was simply an

advisory first step but, as seen, the CSR has ignored the clear instruction of s 61(4), per:

> *s 61(4) Subject to section 63, in subsequently making any administrative assessment in relation to the person and the child support period, the **Registrar must** act in accordance with **this** section.*

for the last 16 years and has COATed payers "on top of" their legally made election.

0.1.14. But now we see that from 1 July 2008 the back door has finally been opened per:

> *s 61(5) This section does not prevent:*
> ***(a) the Registrar making any determination under Part 6A** (departure determinations); or*
> *(b) a court making any order under Division 4 of Part 7 (departure orders); or*
> *(c) the making, and acceptance by the Registrar, of a child support agreement that includes provisions that have effect for the purposes of this Part as if they were such an order made by consent.*

and it goes without saying that access to a court via s 110 has already been removed from the SubDiv in the now familiar devices intended to avoid any compensation for non legislated actions by the COAT [ie **changing** assessments] since 1992, via implied permission to do so via Perryman.

0.1.15. So to explain why this is so sweet, in Butler & Man Watt J almost went into orbit trying to explain why Part 6A must be executive, even without a Head of Power, and in his haste he grabbed this single reference in s 59 and hung his hat on it, failing to notice it was **purely a definition**. This caused embarrassment

for the Full Court, who simply sidestepped the Size 15 Wellington Boot and grabbed Hendy in both hands. We see therefore:

Item 23 - Section 5 Insert:

income amount order means:
(a) a determination ***under Part 6A*** *(departure determinations), or an order under Division 4 of Part 7 (departure orders), that:*
(i) varies the annual rate of child support payable by a parent for a child or for all the children in a child support case; or
(ii) varies the adjusted taxable income, or the child support income, of a parent or provides for the calculation of that amount; or
(b) provisions of a child support agreement that has been accepted by the Registrar that have effect, for the purposes of Part 5, as if they were such an order made by consent.

0.1.16. So on 1 July 2008 the whole of the Wellington Boot gaff is repealed as s 59 disappears into CyberSpace and "income amount order" goes back to s 5, so as future judges might not "put their foot in it" too.

0.1.17. I guess the remaining question is would it be possible to use these admissions to reverse former COATs, with or without compensation? At first blush one might surmise that the change of government might make the path easier in court, but it must be realised that the abuses of the COAT [before it was actually called the COAT] were a hot topic of the 1994 JSC under Keating, and nothing was done, so lots of blood on lots of togas.

0.1.18. However I am willing as always to run it up the flagpole, but the vehicle would need to be experienced in the Yellow Brick Road, fully understand the argument **and** wear a Size 15 BandAid over the aperture housing the "larfin' gear". If the

vehicle passed those tests, I say he would get "a settlement" rather than get before a judge, but that's never a bad outcome.

0.1.19. But as I say, there is way too much blood on the togas and shit circulating, having hit the fan a long long time ago, to allow a "test case" or "class action" to be mounted against what is the biggest employer of lawyers in Australia, which is precisely why Howard had to call in the **Expert** Cleaner, the one who saved the "One True Church" [Catholic] from its pedophile woes with "Towards Healing".

0.1.20. But to me it is simply the Sweetest Victory of All, as it demonstrates just how much damage one can do to "official corruption" simply by researching and preparing an "intellectually honest polemic" **and** sticking to it.